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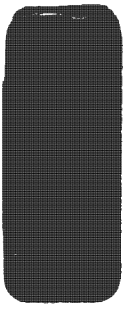

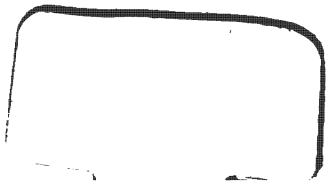

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PUBLIC UTILITIES REPORTS

ANNOTATED

Containing Decisions of the Public Service Commissions and of State and Federal Courts

1915 E

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Ann. Rep. Ala. R. C. .....Annual Report of the Alabama Railroad Commission.
" " Ariz. C. C. .....Annual Report of the Arizona Corporation Commission.
" " Ariz. R. C. .....Arizona Railway Commission Annual Reports. 1909–10.
" " Ark. R. C. .....Arkansas Railroad Commission Annual Reports.
" " Cal. Bd. R. C. ...California Board of Railroad Commissioners. Annual Reports.
" " Can. R. C. .....Board of Railway Commissioners of Canada Annual Reports.
" " Colo. P. U. C. ...Annual Report of the Colorado Public Utilities Commission.
" " Col. S. R. C. ....Colorado State Railroad Commission Annual Reports. 1907–14.
" " Conn. P. U. C. ..Annual Report of the Connecticut Public Utilities Commission.
" " Conn. R. C. .....Annual Report of the Connecticut Railroad Commissioners. 1853–1911.
" " Dist. Col. P. U. C. Annual Report of the District of Columbia Public Utilities Commission.
" " Fla. R. C. .....Annual Report of the Railroad Commissioners for the State of Florida.
" " Ga. R. C. .....Annual Report of the Railroad Commission of Georgia.
" " Houston, Tex., P. S. C. .....Houston, Texas, Public Service Commissioner, Annual Reports.
" " Ia. R. C. .....Annual Report of the Iowa Board of Railroad Commissioners.
" " Ida. P. U. C. ....Annual Report of the Idaho Public Utilities Commission.
" " Ill. P. U. C. .....Annual Report of the Public Utilities Commission of Illinois.
" " Ill. R. & W. C. ..Annual Report of the Illinois Railroad and Warehouse Commission. 1871–1913.
" " Ind. P. S. C. ....Annual Report of the Indiana Public Service Commission.
" " Ind. R. C. .....Annual Report of the Railroad Commission of Indiana. 1906–1912.

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Ann. Rep. Kan. R. C. .....Annual Report of the Railroad Commissioners of Kansas.
" " Ky. R. C. .....Annual Report of the Kentucky Railroad Commission.
" " La. R. C. .....Annual Report of the Railroad Commission of Louisiana.
" " Los Angeles Bd. P. U. .....Los Angeles, Cal., Board of Public Utilities Annual Reports. 1909–1913.
" " Manitoba P. U. C. Manitoba Public Utilities Commission, Canada, Annual Reports.
" " Mass. G. & E. L. C. .....Annual Report of the Massachusetts Board of Gas and Electric Light Commissioners.
" " Mass. High Com. Annual Report of the Massachusetts Highway Commission. (Tel. Cos.)
" " Mass. P. S. C. ...Annual Report of the Massachusetts Public Service Commission.
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" " Md. P. S. C. ....Annual Report of the Maryland Public Service Commission.
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" " Me. R. C. .....Annual Report of the Board of Railroad Commissioners of Maine.
" " Mich. R. C. .....Annual Report of the Michigan Railroad Commission.
" " Minn. R. & W. C. Annual Report of the Minnesota Railroad and Warehouse Commission.
" " Mo. R. & W. C. ..Annual Report of the Missouri Railroad and Warehouse Commission.
" " Mo. R. C. .....Annual Report of the Missouri Board of Railroad Commissioners. 1875–1889.
" " Mont. R. & P. S. C. .....Annual Report of the Railroad and Public Service Commission of Montana.
" " Mont. R. C. .....Annual Report of the Railroad Commission of Montana.
" " N. C. C. C. .....Annual Report of the North Carolina Corporation Commission.
" " N. C. R. C. .....Annual Reports of the North Carolina Board of Railroad Commissioners. 1891–1898.
" " N. D. C. of R. ...Annual Report of the North Dakota Commissioners of Railroads. 1890–1912.
" " N. D. R. C. .....Annual Report of the Board of Railroad Commissioners of North Dakota.
" " Neb. Bd. Trans. ..Annual Report of the Nebraska Board of Transportation. 1887–1900.

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Ann. Rep.	Neb. R. C.	Annual Report of the Nebraska Board of Railroad Commissioners. Only 1st Annual Report. 1885.
"	Neb. S. R. C.	Annual Report of the Nebraska State Railway Commission.
"	Nev. P. S. C.	Annual Report of the Public Service Commission of Nevada.
"	Nev. R. C.	Annual Report of the Railroad Commission of Nevada.
"	N. H. P. S. C. ...	Annual Report of the New Hampshire Public Service Commission.
"	N. H. R. C.	Annual Report of the New Hampshire Board of Railroad Commissioners.
"	N. J. R. C.	New Jersey Board of Railroad Commissioners Annual Reports. 1907–1910.
"	N. M. S. C. C. ...	Annual Report of the State Corporation Commission of New Mexico.
"	Nova Scotia P. U. C.	Nova Scotia Board of Commissioners of Public Utilities, Canada, Annual Reports.
"	N. Y. R. C.	New York Railroad Commission Reports, —— 1906.
"	Ohio C. of R. & T.	Annual Report of the Ohio Commissioner of Railroads and Telegraphs. 1867–1905.
"	Ohio P. S. C.	Annual Report of the Public Service Commission of Ohio. 1912.
"	Ohio P. U. C.	Annual Report of the Public Utilities Commission of Ohio.
"	Ohio R. C.	Annual Report of the Railroad Commission of Ohio. 1906–1911.
"	Okla. C. C.	Annual Report of the Corporation Commission of Oklahoma.
"	Ontario Ry. & Mun. Bd.	Ontario Railway and Municipal Board, Ontario, Canada, Annual Reports.
"	Ore. R. C.	Annual Report of the Oregon Railroad Commission.
"	Pa. P. S. C.	Annual Report of the Pennsylvania Public Service Commission.
"	Pa. S. R. C.	Annual Report of the Pennsylvania State Railroad Commission.
"	Quebec P. U. C.	Quebec Public Utilities Commission, Canada, Annual Reports.
"	R. I. P. U. C. ...	Annual Report of the Public Utilities Commission of Rhode Island.
"	R. I. R. C.	Rhode Island Railroad Commission Annual Reports. 1889–1911.
"	S. D. R. C.	Annual Report of the South Dakota Railroad Commissioners.
"	Tex. R. C.	Annual Report of the Railroad Commission of Texas.

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" " Vt. R. C. .....Annual Report of the Railroad Commissioners of Vermont.
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" " Wash. R. C. ....Annual Report of the Railroad Commission of Washington.
" " Wilmington, Del., P. U. C. .....Wilmington, Del., Board of Public Utility Commissioners Annual Reports.
" " W. V. P. S. C. ..Annual Report of the Public Service Commission of West Virginia.
A. T. & T. Co. Com. L. .....American Telephone and Telegraph Company Commission Leaflet.
" " C. T. C. .....American Telephone and Telegraph Company Commission Telephone Cases.
Bien. Rep. Cal. Bd. R. C.....California Board of Railroad Commissioners Biennial Reports.
" " Kan. P. U. C. ...Biennial Report of the Kansas Public Utilities Commission.
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Cal. R. C. R. .....California Railroad Commission Reports.
Can. Ry. Cases .....Canada Railway Cases (in 16 vols. to date).
Fed. Tr. Rep. .....Federal Trade Reporter.
Hawaii P. U. C. .....Hawaii Public Utilities Commission.
Ill. R. & W. C. D. .....Decisions of the Railroad and Warehouse Commission of Illinois.
Inters. Com. Rep. .....Interstate Commerce Commission Reports.
K. C. Mo. P. U. C. .....Kansas City, Mo., Public Utilities Commission Reports. 1st Semi-Annual, 1909. 1st Annual, 1911.
Mo. P. S. C. R. .....Missouri Public Service Commission Reports.
N. B. Bd. P. U. C. .....New Brunswick Board of Public Utilities Commissioners, Canada.
N. H. P. S. C. R. .....N. H. Pub. Ser. Commission Reports.
N. J. P. U. C. R. .....Reports of the Board of Public Utilities Commissioners of New Jersey.
P. I. P. U. C. .....Philippine Islands Public Utilities Commission.
P. S. C. (1st Dist. N. Y.) ..Public Service Commission Reports, First District New York.
P. S. C. (2d Dist. N. Y.) ..Public Service Commission Reports, Second District New York.
P. S. Reg. .....Public Service Regulation.
Rate Res. .....Rate Research, published by the National Electric Light Association.

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R. I. Bd. R. C. ..... Rhode Island Board of Railroad Commissioners Reports.
St. J. Mo. P. U. C. ..... St. Joseph, Mo., Public Utilities Commission. (No regular reports.) 1909–1913.
St. L. Mo. P. S. C. ..... St. Louis, Mo., Public Service Commission.
Tenn. R. C. ..... Tennessee Railroad Commission (no decisions published). Annual Reports. 1897–1912.
Wis. R. C. R. ..... Wisconsin Railroad Commission Reports.

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PUBLIC UTILITIES REPORTS

ANNOTATED

DISTRICT OF COLUMBIA PUBLIC UTILITIES COMMISSION.

IN RE AUTO LIVERY COMPANY et al.

[Order No. 158; Formal Case No. 32; P.U.C. No. 1507/5.]

Valuation — Working capital.

A reasonable amount should be allowed for working capital in the valuation of a utility's property, which should include the material and supplies which experience has shown to be necessary to be kept on hand, and enough cash to pay expenses until the collection of revenues provides a sufficiency.

Valuation — Working capital — Materials and supplies.

The cost price of materials and supplies which an auto-livery and taxicab company had on hand at the date of the valuation was included by the Commission in its allowance of working capital in arriving at the value of the company's property, where there was no suggestion that such amount did not satisfy the requirements of the company at that time.

Valuation — Working capital — Insurance.

One half the sum paid in advance by an auto-livery and taxicab company for insurance was included by the Commission in its allowance of working capital in arriving at the value of the company's property, where it appeared that the company distributed this item by charging an equal portion thereof to expenses monthly.

Valuation — Working capital — Licenses.

One half the sum paid in advance by an auto-livery and taxicab company for licenses was included by the Commission in its allowance of working capital in arriving at the value of the company's property, where it appeared that the company distributed this item by charging an equal portion thereof to expenses monthly.

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Valuation — Working capital — Taxes.

A claim of one half of the amount of annual taxes as an allowance for working capital was excluded by the Commission in arriving at the value of an auto-livery and taxicab company's property, on the ground that no capital was necessary for taxes that were not paid in advance, and that they should be accrued from charges to the income account monthly for payment at the end of the fiscal year.

Valuation — Working capital — Cash.

The sum of $4,000 as cash in hand to meet the regular expense payments of an auto-livery and taxicab company was held sufficient by the Commission in making an allowance for working capital in arriving at the value of the company's property in view of the experience of similar companies.

Valuation — Going value — Service of officer.

A claim for the allowance as going value of a sum for the value of services rendered by an officer of an auto-livery company, for which no salary was paid, was excluded by the Commission in arriving at the value of the company's property, where it appeared that the company having but a nominal cash capital, the acquisition of its property resulted solely from the services of the officer, and that therefore their value was represented by the value of the property.

Depreciation — Rate — Motor-cabs.

An auto-livery and taxicab company was ordered to conform its depreciation account to a rate of 19.7 per cent on the cost of property new for motor cabs.

Depreciation — Rate — Furniture and equipment.

An auto-livery and taxicab company was ordered to conform its depreciation account to a rate of 9.3 per cent on the cost of property new for office furniture and fixtures, machine shop, tire room, and miscellaneous equipment.

[July 21, 1915.]

PROCEEDINGS for the valuation of the property of an auto-livery and taxicab company. The cost of reproduction new was fixed at $129,022.48; the cost of reproduction new, less depreciation, was fixed at $75,751.75.

Kutz, Chairman: Paragraphs 6, 7, and 8 of the Public Utilities law provide:

"Par. 6. That the Commission shall ascertain, as soon and as nearly as practicable, the amount of money expended in the construction and equipment of every public utility, including the amount of money expended to procure any right of way; also the amount of money it would require to secure the right of way, reconstruct any roadbed, track, . . . and any other property or instrument not included in the foregoing enumera-

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tion used in or useful to the business of such public utility, and to replace all the physical properties belonging to the public utility. . . .

"Par. 7. That the Commission shall value the property of every public utility within the District of Columbia actually used and useful for the convenience of the public at the fair value thereof at the time of said valuation.

"Par. 8. That before final determination of such value the Commission shall, after notice of not less than thirty days to the public utility, hold a public hearing as to such valuation in the manner hereinafter provided for a hearing, which provisions, so far as applicable, shall apply to such hearing. The Commission shall, within ten days after such valuation is determined, serve a statement thereof upon the public utility interested, and shall file a like statement with the District Committees in Congress." [37 Stat. at L. 978, chap. 150.]

In compliance with this law, an inventory of the property of the utility was made as of June 30, 1914, and a valuation made thereof. A copy of this inventory and valuation was furnished to the utility on May 1, 1915, together with a notice that a public hearing as to such valuation would be held on June 7, 1915. The hearing was held in accordance with the notice, at which all parties concerned were given an opportunity to make claim for any additional values, physical or otherwise, that may have been omitted from the tentative valuation, and also to make any arguments as to the method by which a fair value of the property of the utility should be determined. The arguments presented by the representative of the utilities were supplemented by a letter in the nature of a brief submitted by the utility's attorney to the Commission on June 21, 1915.

The utility accepted without objection the valuation made by the Commission so far as the purely physical property is concerned.

The utility claims that working capital should be allowed as shown by the following items, *viz.:*

(a) Parts and supplies		$5,854.58
(b) Insurance	$8,154.64 (half)	4,077.32
(c) Licenses	692.25 (half)	346.13
(d) Taxes	1,734.80 (half)	868.90
(e) Cash required to be in hand		6,000.00
Total		$17,146.93

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The Commission is of the opinion that there should be allowed a reasonable amount of working capital. The amount necessary will vary with the kind of utility and with varying business practices. It should include the material and supplies which experience has shown to be necessary to be kept on hand and enough cash to pay expenses until the collection of revenues provides a sufficiency.

In that light the claims are considered below in detail.

Parts and Supplies.—Reference to the transcript of the hearing on page 5, the testimony of Mr. Mattingly, gives the above claimed amount as the value of material and supplies on hand December 31, 1914. This valuation is made as of June 30, 1914, at which time the value of the material and supplies on hand, taken at their cost price, was $5,303.13. There is no suggestion that that amount did not satisfy the requirements of the company at that time. It is therefore taken to be reasonable.

Prepaid Insurance.—It is necessary for the company to pay its insurance premiums in advance. They aggregate about $8,000. Since an equal portion is charged to expenses monthly, it follows that half the amount, or $4,000 for the year, would allow for the insurance expenses.

Prepaid Licenses approximate $750 a year. Since an equal portion is charged to operating expenses monthly, half the amount, or $375, would allow for prepaid licenses.

Taxes.—One half of the annual taxes, $868.90, is claimed as working capital. Taxes are not paid in advance. They should be accrued from charges to the income account monthly for payment at the end of the fiscal year. None of the capital of the company is necessary for their payment, and therefore no allowance should be made for the item.

Cash.—The company usually keeps a larger balance of cash on hand than is absolutely necessary to meet its regular expense payments. The frugal management of cash as shown by the experience of other companies in the same business would make it possible to meet the expenses of this company with an allowance of $4,000.

The Commission is therefore of the opinion that $14,000 is a reasonable allowance for the working capital of this utility.

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The utility makes claim for $21,000 for "the reasonable value of the services rendered by Mr. A. L. Cline as manager, treasurer, etc., of the Auto Livery Company, for which he drew no salary from it and has not been paid;" arguing that this amount "should be treated as a charge against said company and added to the present physical value of its property as 'going value.'"

It is a fact that the business was begun originally with a small amount of cash, and none subsequently added to it, and that its growth and success are due to the efforts of Mr. Cline. His services were practically all that was put into the business. The value of the property of the company at the present time is the measure of the value of those services for which no salary has been paid.

The Commission therefore finds the following values as of June 30, 1914:

Cost of Reproduction New and Cost of Reproduction New Less Depreciation.

Classification.	New.	New Less Depreciation.
1. Office furniture and fixtures	$3,018.65	$1,582.29
2. Motor cabs	108,865.00	58,725.00
3. Machinery and tools	2,000.00	833.06
Total items 1, 2, and 3	$113,883.65	$61,140.35
4. Add 1 per cent (see note below)	1,138.83	611.40
Total items 1 to 4	$115,022.48	$61,751.75
5. Material and supplies	5,303.13	5,303.13
6. Additional working capital	8,696.87	8,696.87
Total	$129,022.48	$75,751.75

Note.—Item 4 includes legal work, organization, omissions, and contingencies.

In addition to the above values the Commission finds the following:

Expended in the construction and equipment of the utility as shown by the utility's records	$126,847.97
Subscribed by stockholders	$ 0.00
Accrued depreciation as shown by the utility's records	$ 46,513.26
Accrued depreciation as found by the Commission	$ 53,270.73

Paragraph 16 of the Public Utilities law prescribes:

"Par. 16. That every public utility shall carry a proper and adequate depreciation account. The Commission shall ascertain and determine what are the proper and adequate rates

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of depreciation of the several classes of property of each public utility. These rates shall be such as will provide the amounts required over and above the expense of maintenance to keep such property in a state of efficiency corresponding to the progress of the industry. Each public utility shall conform its depreciation accounts to such rates so ascertained and determined by the Commission. . . ."

The Commission finds that the following annual rates of depreciation are proper and adequate for the several classes of property, and it is therefore—

Ordered:

That the Auto Livery Company and the Federal Taxicab Company conform their depreciation accounts to these rates of depreciation based on the cost of property new:

Motor cabs	19.7%
Office furniture and fixtures, machine-shop equipment, tire room equipment, and miscellaneous equipment	9.3%

DISTRICT OF COLUMBIA PUBLIC UTILITIES COMMISSION.

IN RE BARNETT TAXICAB COMPANY.

[Order No. 157; Formal Case No. 23; P. U. C. No. 1506/6.]

Valuation — Working capital — Taxicab company.

A taxicab company the present value of whose property was found to be $8,989 was allowed a working capital of $700, consisting of materials and supplies $100, prepaid insurance $75, prepaid licenses $25, and cash $500.

Depreciation — Rates — Motor cabs — Furniture and equipment.

The rate of depreciation for motor cabs was found to be 15.7 per cent and for office furniture and fixtures, machine-shop equipment, and miscellaneous equipment of a taxicab company, 9.5 per cent, such rates to be based on the cost of reproduction new of the property on hand at the time of the valuation and on the original cost new in the case of property acquired thereafter.

[July 21, 1915.]

VALUATION of the property of the Barnett Taxicab Company. The total cost of reproduction new was found to be $22,550.34, and the total cost of reproduction new less depreciation to be $9,779.83.

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Kutz, Chairman: Paragraphs 6, 7, and 8 of the Public Utilities law provide:

"Par. 6. That the Commission shall ascertain, as soon and as nearly as practicable, the amount of money expended in the construction and equipment of every public utility, including the amount of money expended to procure any right of way; also the amount of money it would require to secure the right of way, reconstruct any roadbed, track, . . . and any other property or instrument not included in the foregoing enumeration used in or useful to the business of such public utility, and to replace all the physical properties belonging to the public utility. . . .

"Par. 7. That the Commission shall value the property of every public utility within the District of Columbia actually used and useful for the convenience of the public at the fair value thereof at the time of said valuation.

"Par. 8. That before final determination of such value the Commission shall, after notice of not less than thirty days to the public utility, hold a public hearing as to such valuation in the manner hereinafter provided for a hearing, which provisions, so far as applicable, shall apply to such hearing. The Commission shall, within ten days after such valuation is determined, serve a statement thereof upon the public utility interested, and shall file a like statement with the District Committees in Congress." [37 Stat. at L. 978, chap. 150.]

In compliance with this law, an inventory of the property of the utility was made as of November 30, 1914, and a valuation made thereof. A copy of this inventory and valuation was furnished to the utility on April 29, 1915, together with a notice that a public hearing as to such valuation would be held on June 7, 1915. The hearing was held in accordance with the notice, at which all parties concerned were given an opportunity to make claim for any additional values, physical or otherwise, that may have been omitted from the tentative valuation, and also to make any arguments as to the method by which the fair value of the property of the utility should be determined.

The utility accepted without objection the valuation made by the Commission so far as the purely physical property is concerned, and on June 19, 1915, through its attorney, advised the Commission: "We have decided that your valuation in the sum

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of $8,989 is a fair and equitable valuation of the property as it now exists."

The utility claims that working capital should be allowed to the amount of $500.

The Commission is of the opinion that there should be allowed a reasonable amount of working capital. The amount necessary will vary with the kind of utility and varying business practices. It should include the material and supplies which experience has shown to be necessary to be kept on hand, and enough cash to pay expenses until the collection of revenues provides a sufficiency.

Considering in that light the details of the claim:

Material and Supplies.—This company finds it more satisfactory and economical to purchase supplies and parts for repairs as they are needed, than to keep any considerable quantity on hand. Those on hand are fairly valued at $100.

Prepaid Insurance.—The prepaid insurance premiums aggregate about $150, half of which should allow for insurance expenses, *viz.*, $75.

Prepaid Licenses approximate $50; $25 would therefore allow for them.

Cash.—It is believed that $500 for current use will supply all of the company's requirements.

The Commission is therefore of the opinion that $700 is a reasonable allowance for the working capital of this utility.

The Commission therefore finds the following values as of November 30, 1914:

Cost of Reproduction New and Cost of Reproduction New Less Depreciation.

Classification.	New.	New Less Depreciation.
1. Office furniture and fixtures	$46.00	$19.90
2. Motor cabs	20,900.00	8,545.00
3. Machinery and tools	688.00	425.04
Total items 1, 2, and 3	$21,634.00	$8,989.94
4. Add 1 per cent (see note below)	216.34	89.89
Total items 1 to 4	$21,850.34	$9,079.83
5. Material and supplies	100.00	100.00
6. Additional working capital	600.00	600.00
Total	$22,550.34	$9,779.83

Note.—Item 4 includes legal work, organization, omissions, and contingencies.

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In addition to the above values the Commission finds the following:

Subscribed by stockholders	$ 0.00
Accrued depreciation as shown by the utility's records	$ 0.00
Accrued depreciation as found by the Commission	$12,770.51

The company has not heretofore kept its books and accounts in such a manner that it is possible to obtain from them the amount expended in the construction and equipment of the utility.

Paragraph 16 of the Public Utilities law prescribes:

"Par. 16. That every public utility shall carry a proper and adequate depreciation account. The Commission shall ascertain and determine what are the proper and adequate rates of depreciation of the several classes of property of each public utility. These rates shall be such as will provide the amounts required over and above the expense of maintenance to keep such property in a state of efficiency corresponding to the progress of the industry. Each public utility shall conform its depreciation accounts to such rates so ascertained and determined by the Commission. . . ."

The Commission finds that the following annual rates of depreciation are proper and adequate for the several classes of property, and it is therefore—

Ordered:

That the Barnett Taxicab Company conform its depreciation accounts to these rates of depreciation, and that in the case of property on hand November 30, 1914, these rates be based on the cost of reproduction new of the property, and in the case of property acquired subsequent to that date, the rates of depreciation be based on the original cost new:

Motor cabs	15.7%
Office furniture and fixtures, machine-shop equipment, and miscellaneous equipment	9.5%

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ILLINOIS PUBLIC UTILITIES COMMISSION.

STATE PUBLIC UTILITIES COMMISSION EX REL. ALTON BOARD OF TRADE et al.

v.

ATCHISON, TOPEKA, & SANTA FE RAILWAY COMPANY et al.

[No. 2243.]

Common carriers — Terminal industrial railroad — Maintenance of joint and through rates.

A terminal railroad having about 25 miles of main tracks and 16 miles of siding, and serving various industries by means of private sidings, and having connections with all of the trunk lines of railroads in its locality, is a common carrier entitled to a joint rate with the other railroads with which it connects.

[July 14, 1915.]

APPLICATION to suspend tariffs published by various Illinois carriers which canceled through rates with the Illinois Terminal Company; application granted.

By the **Commission**: In this matter it appears that on the 5th day of March, 1914, the Alton board of trade and others petitioned this Commission to suspend all tariffs published by the various Illinois carriers, canceling through rates and joint working arrangements with the Illinois Terminal Railroad, and to enter upon hearing regarding the reasonableness and justification of said tariffs.

That on the 27th day of March, 1914, the Commission acted upon said petition and issued an order suspending such schedules until the 30th day of July, 1914.

That this Commission issued subsequent orders keeping the said tariffs under suspension until the 30th day of May, 1915, and the carriers voluntarily retained said tariffs under suspension until the 15th day of July, 1915.

On the 29th day of January, 1915, a hearing was held before the Commission in the city of Springfield, and petitioners and respondents were fully represented.

At said hearing testimony was taken which pertained to the

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question whether said Illinois Terminal Railroad was a common carrier or not; and it was stated by the carriers that no objection to the cancelation of such schedules would be offered if said Illinois Terminal Railroad was found to be a common carrier.

The Illinois Terminal Railroad operates from Alton to Formosa Junction, Illinois, a distance of 21 miles, and serves a large manufacturing district. It has track connection with practically all of the Truck Line Carriers operating north and east of East St. Louis, and thereby enables the manufacturer or jobber of Alton and its vicinity to handle his product through without the necessity of delay in large terminals.

The carriers' testimony gives the impression that their action was taken as the result of the Eastern Five Per Cent Case heard by the Interstate Commerce Commission. It was suggested that the Interstate Commerce Commission had there recommended the canceling of arrangements with so-called industrial roads. Section 10 of the act creating the Public Utilities Commission of Illinois defines the term "common carrier" as follows: "The term 'common carrier,' when used in this act, includes all railroads, street railroads, express companies, private car lines, sleeping car companies, fast freight lines, steamboat lines and other common carriers by water, and every corporation, company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating or managing any such agency for public use in the transportation of persons or property within this state."

A part of the testimony of General Freight Agent J. C. Ryan of the Illinois Terminal Railroad is in substance as follows:

That said railroad was incorporated in 1895 under the general railroad law of Illinois of 1872, to furnish terminals in and develop the industrial district of Alton;

That the Illinois & Mississippi Valley Terminal Railroad Company was incorporated in 1899 under the same law to build and operate a railroad from Alton to Edwardsville, Edwardsville to Belleville, Belleville to East Carondolet, all points in Illinois;

That the two companies were consolidated in 1899 under the

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name of the Illinois Terminal Railroad Company, which is the present company which owns and operates this railroad;

That the capitalization is $500,000 and the outstanding bonded indebtedness is $450,000;

That both the stock and bonds are owned by various individuals, with the exception of $40,000 worth of bonds in the treasury of the Illinois Terminal Railroad Company;

That none of the stock or bonds is owned by an industry located on its line;

That the company owns and operates 25.1 miles of main track and 16.94 miles of side tracks, has 9 locomotives, 80 freight cars, 2 passenger cars, 4 cabooses, 1 steam shovel, 1 wrecking crane, and 2 wrecking cars; maintains a large classification yard; a 12-stall roundhouse; a well-equipped repair shop and machine shop; freight warehouses and team tracks at various points; and that the company serves by individual sidings, 37 industries;

That the company connects with 12 other lines and maintains joint rates with these lines and their connections;

That it files tariffs with the Interstate Commerce Commission and the State Public Utilities Commission; and files with said Commissions the reports required of common carriers; and that it holds itself out to the public as a common carrier.

The Commission having considered the evidence and the arguments of counsel and being fully advised in the premises, finds that the Illinois Terminal Railroad (Company) is a common carrier, and is entitled to the establishment and maintenance of reasonable through or joint rates with the other respondents; and that the schedules filed by such respondents or their agents, in so far as they purport to cancel the application of through rates or joint rates over the lines of said Illinois Terminal Railroad (Company) and of such respondents between the Alton manufacturing district in Illinois and other points in Illinois, are unjust and unreasonable:

It is therefore *ordered* that all such schedules or tariffs filed with this Commission by the respondents or any of them or by their agents, in so far as they purport to cancel the application of through routes or joint rates over the lines of said Illinois Terminal Railroad (Company) and of such respondents be-

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tween the Alton manufacturing district in Illinois and other points in Illinois, be and the same are hereby declared to be unjust and unreasonable, and of no effect, and they are hereby canceled and annulled; and that a copy of this order shall be served upon all said respondents and upon W. H. Hosmer, agent, and Eugene Morris, agent.

ILLINOIS PUBLIC UTILITIES COMMISSION.

FARMERS MUTUAL TELEPHONE COMPANY OF LOSTANT, ILLINOIS,

v.

CENTRAL UNION TELEPHONE COMPANY et al.

[No. 3538.]

Service — Telephone — Physical connection — Shorter route.

In determining whether physical connection between the lines of two telephone companies shall be made through the exchange of a company competing with applicant, or through the exchange of a fourth company, some consideration should be given to the fact that certain messages would reach their destination by a more direct route and with less switching if connection were made through the exchange of the fourth company than if made through the exchange of the competing company; but this factor is not controlling where it appears that connection by the more direct route would injure the business of the competing company, that only 25 per cent of the toll business would be affected, and in the absence of evidence that the connection by the longer route is not practicable.

Service — Telephone — Physical connection — Competing company.

Physical connection between the lines of two telephone companies was ordered to be made through the exchange of a competing company rather than through the exchange of a company located at another place, such connection to be made at the cost of the complainant and on such terms as to prevent loss of business to the competing company, where it appears that such connection was the only practicable manner of providing adequate toll facilities for the complainant.

[July 22, 1915.]

THE complainant in this case asked for physical connection with the lines of the Central Union Telephone Company and the Tonica Telephone Company. The Central Illinois Independent Telephone Company being a competitor of the complainant, and

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having physical connection with the lines of the Central Union Telephone Company, was made a party to the proceeding. The Central Union Telephone Company had no exchange at the place where the exchange of complainant was located. The complainant could obtain physical connection with the lines of the Central Union Telephone Company either through the exchange of the Tonica Company or through the exchange of the Central Illinois Independent Telephone Company, the latter's lines being connected with the lines of the Central Union Telephone Company by a longer route. The Tonica Company was willing to make the connection. The Central Union Telephone Company was willing to handle the toll business of complainant, but asked that the connection be made through the exchange of the Central Illinois Independent Telephone Company. The Commission ordered that the connections be made at the latter point.

By the **Commission**: Petition in this case represents that the complainant is engaged in the operation and management of a telephone system in and around the village of Lostant, La Salle county, Illinois; that the defendants, Central Union Telephone Company and Tonica Telephone Company, are public utilities and have refused and neglected to receive, transmit, and deliver messages from the complainant; that the Central Union Company accepts messages from and delivers messages to other companies *via* Tonica, *viz.:* The McNabb Mutual Telephone Company and Florida Mutual Telephone Company, and that the refusal on the part of the Central Union Company to accept messages from and deliver messages to the Farmers Mutual Company *via* Tonica, constitutes a discrimination and is in violation of §§ 36 and 44 of the act to provide for the regulation of public utilities.

Hearing was held at Springfield, Illinois, April 20, 1915. Alfred H. Bell and W. C. Lynch appeared for the petitioner; C. H. Rottger appeared for the Central Union Telephone Company and C. R. Ong and W. H. Mays appeared for the Tonica Telephone Company.

It appeared from the testimony that the Central Union Telephone Company has no direct connection with Lostant; that it has a physical connection with the Tonica Telephone Company at

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Tonica, also a physical connection with the Central Illinois Independent Telephone Company at Rutland; that the Central Illinois Company operates an exchange at Lostant; that all toll messages between Lostant and points reached over the lines of the Central Union Telephone Company, and its connecting companies, are routed over the lines of the Central Illinois Company *via* Winona and Rutland; that a connecting line is maintained between the Farmers Mutual Company and the Tonica Company; that the Tonica Company is willing to accept and deliver toll messages from and to Lostant over such line *via* Tonica, and that it is estopped from handling such messages to points reached over the lines of the Central Union Company because of the refusal of the Central Union Company to receive and deliver such messages.

The Tonica Company protested against any complaint being directed against it, and, it appearing that the Central Illinois Independent Telephone Company should have been made a party to the proceeding, leave was granted the petitioner to file an amended petition and the case was continued.

Hearing on the amended petition was held at Springfield, Illinois, May 18, 1915. Honerable William Scanlan, attorney, appeared for the petitioner, C. H. Rottger again appeared for the Central Union Telephone Company, and F. X. Ames appeared for the Central Illinois Independent Telephone Company.

It appeared from the testimony presented by the petitioner that the Farmers Mutual Telephone Company serves about 200 subscribers in and around the village of Lostant; that these subscribers cannot get long distance connection; that there is considerable demand for long distance connection, particularly with Ottawa, which is the county seat of La Salle county; that the natural route for business between Lostant and Ottawa, and other points in La Salle county and beyond, is *via* Tonica and La Salle; that the Farmers Mutual Company and the Tonica Company own jointly a No. 12 iron metallic circuit between Lostant and Tonica, and that this line should be used in the handling of business with Lostant and an indirect connection established between the lines of the Farmers Mutual Company and the toll line system of the Central Union Company.

It appeared from the testimony of Mr. Ames that the Central

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Illinois Independent Telephone Company, a commercial company, capitalized at $75,000, operates a general telephone system consisting of local exchanges and connecting toll lines in Marshall, La Salle, and Livingston counties, with its principal place of business at Rutland, Illinois; that in 1906 the Central Illinois Company acquired by purchase a telephone exchange at Lostant; that subsequently on account of some dissatisfaction among the rural subscribers of the Lostant exchange, another company was formed which was operated on a so-called mutual or co-operative plan; that through the efforts of the Mutual Company a great many subscribers of the Central Illinois Company discontinued their service, so that the number of subscribers served by it was reduced from 170 in 1906 to 49 in 1915.

It further appeared that, of the 24 business houses in the village of Lostant that have telephone service, 20 have the service of the Central Illinois Company; that the Farmers Mutual Company has only a few more subscribers in the village proper than the Central Illinois Company; that in 1911, through the influence of the Central Union Company, an effort was made to consolidate or merge the two exchanges at Lostant, and that several propositions were made to the Farmers Mutual Company by the Central Illinois Company. Nothing was accomplished through these negotiations and the matter was carried along until February, 1915, when the Farmers Mutual Company filed complaint with the Commission.

Mr. Ames contended that the Central Illinois Company had been ready and willing at all times to make connection with the Farmers Mutual Company or to dispose of its property at the appraised value of the physical plant. He further contended that for the Central Union Company to handle business with Lostant *via* Tonica would result in irrevocable injury to the Central Illinois Company, and that the amount of business handled with Lostant does not justify any change in the present routing.

It appeared from the testimony of Mr. Rottger that the present arrangement is entirely satisfactory to the Central Union Company; that the amount of business handled with Lostant does not justify any change in the routing; that the plan proposed by the petitioner would result in a split report of the business with Lostant which would cause confusion, not only in the routing of

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messages, but in the checking and the apportioning of commissions and pro-rates; that the Central Union Company is perfectly willing to extend to the Farmers Mutual Company the use of its toll line system, but that all of the business with Lostant should be handled through the exchange of the Central Illinois Company.

The complainant company at one time had an indirect connection with the Central Union Company, but it appears that this connection was mutually unsatisfactory and was discontinued. The Central Union Company subsequently was unable to effect any satisfactory arrangement with the complainant company for the handling of toll messages at Lostant, and, in consequence of this fact, entered into the present agreement with the Central Illinois Company.

Unquestionably, the possession of a toll connection with the Central Union Company is an asset of considerable value to the Central Illinois Company, since if it were not for this connection, most of the Lostant subscribers of the Central Illinois Company would take the service of the complainant company, whose rates for local service are very much lower than those of the Central Illinois Company.

To authorize the establishment of a toll connection between the Farmers Mutual Company and the Central Union Company through Tonica, and at the same time allow the continuance of the present arrangement between the Central Union Company and the Central Illinois Company, would not only result in a considerable loss to the Central Illinois Company and an unnecessary expense to the Central Union Company, but would also tend to aggravate and prolong the unsatisfactory competitive conditions that now exist at Lostant.

Doubtless some consideration should be given to the fact that Lostant messages destined for Ottawa and other points north, if routed *via* Tonica, would have to be switched through only two points, *viz.:* Tonica and La Salle; whereas, in routing such messages *via* Wenona, it is necessary to switch through Wenona, Rutland, and Streator. According to the evidence submitted by the defendant companies, however, approximately 75 per cent of the toll business originating at Lostant is destined for points south, and in the absence of any proof that the route *via* Wenona,

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Rutland, and Streator is impracticable for handling business to points north, it is reasonable to assume that the establishment of a toll connection at Lostant would meet the requirements of the complainant company.

While it is desirable to route all toll traffic in as direct a manner as possible, the actual mileage involved in handling toll messages is not so important a factor of transmission as the character of the line. There is nothing in the record to show that the quality of the service over the longer route is inferior; on the other hand, witness for the Central Union Company testified that the service over this route is considered first class, and that the length of line does not materially affect the transmission.

Practically all business houses in Lostant now have the telephones of both companies, and it is not likely that the establishment of a connection between the two switchboards would result in any unusual increase in the number of toll messages to points north of Lostant, since most of the toll traffic will probably originate with the business subscribers. It is possible, of course, that such a connection might develop considerable business with La Salle and Ottawa among the rural subscribers of the complainant company, but there is nothing in the record to substantiate such a possibility.

After a careful consideration of all the facts presented in this case, it appears that the establishment of a physical connection between the switchboards of the Farmers Mutual Company and the Central Illinois Company at Lostant is the only practicable manner of providing adequate toll facilities for the Farmers Mutual Company.

In order to prevent injury to the Central Illinois Independent Telephone Company, the terms upon which the connection should be made must be such as to prevent the loss of business by that company because of the physical connection. The law provides that the companies shall agree upon the terms, and that in case an agreement cannot be reached, the Commission shall fix the terms. It is not necessary, therefore, for the Commission to fix the terms in this order.

It is therefore ordered that the Central Illinois Independent Telephone Company and the Farmers Mutual Telephone Company make such physical connection between their exchanges in

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the village of Lostant, as is required for the furnishing of toll service to the subscribers of the Farmers Mutual Telephone Company, and that such toll service be as complete as is furnished to the subscribers of the Central Illinois Independent Telephone Company.

It is further ordered that the cost of making such connection shall be borne by the Farmers Mutual Telephone Company.

Sixty days is deemed a reasonable time within which the companies shall comply with this order.

By order of the Commission this 22d day of July, 1915, dated at Springfield, Illinois.

ILLINOIS PUBLIC UTILITIES COMMISSION.

EUGENE COOPER et al.

v.

WILLIAMSVILLE-SHERMAN TELEPHONE COMPANY.

[No. 3884.]

Discrimination — Toll service — Removal of exchange.

A telephone company is not justified in charging toll service between a small village and an exchange located at the county seat 9 miles distant because of the fact it has moved its exchange, formerly located in that village, to another place 15 miles distant from the county seat, and because the subscribers of the latter exchange have always paid for toll service; since the situation of the subscribers of the two exchanges with reference to toll service is different.

[July 22, 1915.]

COMPLAINT as to toll telephone charges between Sherman and Springfield, and as to defective service. It appeared that the defendant telephone company had formerly rendered free service between the village of Sherman and city of Springfield; but that when it removed its exchange from the village of Sherman to the city of Williamsville, it made a charge of 10 cents between Sherman and Springfield, in order to prevent discrimination between Williamsville subscribers who had at all times been charged a toll rate to Springfield and the Sherman subscribers now connected with the Williamsville exchange. The

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Commission ordered the re-establishment of free service between Sherman and Springfield, and further ordered the company to take steps to improve its service in Sherman so as to render the same adequate, reserving jurisdiction of the subject-matter and parties for the purpose of entering such additional or supplementary orders as the facts may from time to time warrant.

The appearances are set out in the opinion.

By the **Commission:** The complaint in this case, which was filed by a subscriber of the respondent, sets forth that on or about April 20, 1915, the respondent removed its telephone exchange from the village of Sherman to the city of Williamsville, Illinois, and that since that date it has illegally charged a toll rate for telephone service from Sherman to Springfield, where previously no charge had been made.

The complainant also charges that since the removal of said exchange, the telephone service furnished by respondent has been inadequate and insufficient, and that said exchange should be returned to and again operated at Sherman.

The answer of the respondent denies that the service now furnished to its Sherman subscribers is inadequate or defective. It admits that it now charges a toll of 10 cents from Sherman to Springfield, but says that that charge is now made in order to prevent discrimination between its Williamsville subscribers, who have at all times been charged a toll rate to Springfield, and its Sherman subscribers who are now connected with and considered by respondent as a part of its Williamsville exchange.

A hearing was held before the Commission at Springfield on June 29, 1915. Alonzo Hoff, attorney, appeared on behalf of the complainant; Ben B. Boynton, attorney, represented the respondent.

It appears from the evidence in this case that the village of Sherman consists of about 150 inhabitants and is located about 8 miles northeast of Springfield; that Williamsville has a population of about nine hundred, and is located about 7 miles northeast of Sherman and about 15 miles from Springfield; that for a number of years the respondent company operated a telephone exchange at Sherman, and also an exchange at Williamsville.

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In the month of June, 1914, respondent made application to this Commission for authority to abandon its Sherman exchange, and to connect its Sherman subscribers by means of trunk lines to its Williamsville exchange.

This authority was granted by the Commission in an order entered July 31, 1914. At that time respondent had about forty-two subscribers connected with its Sherman exchange. These subscribers, in addition to their local service had free exchange with the subscribers of the Interstate Independent Telephone & Telegraph Company at Springfield.

In pursuance of the authority granted by this Commission respondent company in April, 1915, connected its Sherman subscribers with its Williamsville exchange and then abandoned its central office at Sherman. About that time it also decided to and did discontinue free service to its Sherman subscribers with Springfield. This action was taken because of the fact that its Williamsville subscribers at no time had free service with Springfield, and the subscribers formerly connected with its Sherman exchange were then connected with and considered by respondent as a part of its Williamsville exchange.

This action by respondent was opposed by the Sherman subscribers, and following the abandonment of said Sherman exchange the service furnished to the latter subscribers apparently became inadequate and unsatisfactory. The complaint herein was then filed with this Commission.

The evidence also shows that at the present time telephone service is very poor and unsatisfactory, and the respondent practically admits this to be the case, but states that it was taking steps to improve the service by constructing additional circuits between said Williamsville and Sherman, and by the installation of a public telephone booth at Sherman at the time this complaint was filed, but after the filing of said complaint it stopped work to await the outcome of this case.

In deciding whether the respondent was justified in discontinuing to its Sherman subscribers free service to Springfield, consideration must be given to the fact that all of the forty-two subscribers in question are located inside of or within the immediate vicinity of the village of Sherman; that they are within a radius of about 9 miles of Springfield, which is the county

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seat; that a large part of their business is transacted at Springfield. It therefore appears that the matter of free service to Springfield was of much greater importance to them than it would be to the Williamsville subscribers of the respondent.

The latter subscribers are located in or adjacent to a city with a population of nearly one thousand, and Williamsville is located nearly twice as far from Springfield as is Sherman. These and other factors which might be mentioned apparently were considered by the respondent company at the time it operated a telephone exchange at Sherman, and as a result its Sherman subscribers were given free exchange and service with Springfield, while its Williamsville subscribers were charged a toll of 10 cents. Our conclusion on this question is that the former subscribers to the Sherman exchange are not similarly situated with the Williamsville subscribers of the respondent, and that the discontinuance of free service with Springfield was not justified.

The petitioner contends that in order to remedy defective service now being furnished the former Sherman subscribers, it will be necessary for the respondent to reinstall its telephone exchange at Sherman and again operate it at that point. With this we are unable to agree. On the contrary, we are of the opinion that if sufficient telephone circuits are constructed between Sherman and Williamsville, and if the defective rural lines and instruments that now exist are properly repaired or replaced, and if a public telephone booth is constructed and maintained at Sherman by the respondent, that adequate service can be furnished complainant and the other Sherman subscribers from the Williamsville exchange of the respondent. However, if the service is not improved and made adequate within the time hereinafter fixed by its order, the Commission will consider further the question of requiring respondent company to reinstall and operate the telephone exchange at Sherman.

The Commission having fully considered the evidence and arguments of counsel and being fully advised in the premises,—

It is therefore *ordered* that the respondent shall, from and after receipt of a copy of this order, discontinue the toll charge of 10 cents per message between Sherman and Springfield, Ill.

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inois, now being charged subscribers formerly connected with its Sherman exchange, and shall, until further ordered by this Commission, furnish said subscribers free service to Springfield.

It is further *ordered,* that the respondent shall forthwith take such steps as may be necessary to improve its telephone service and to render same adequate, and to that end it shall construct and operate such additional telephone circuits between Williamsville and Sherman as may be necessary. It shall also construct and maintain a public booth at Sherman, and it shall repair or replace such of its telephone equipment as is defective, and shall take whatever other action may be necessary or proper to comply with this order. Sixty days is considered sufficient time within which respondent shall comply with this portion of the order in this case.

The Commission reserves jurisdiction of the subject-matter and of the parties for the purpose of entering such additional or supplemental order herein as the facts may, from time to time, warrant.

By order of the Commission this 22d day of July, 1915, dated at Springfield, Illinois.

ILLINOIS PUBLIC UTILITIES COMMISSION.

IN RE COLCHESTER FARMERS TELEPHONE COMPANY.

[No. 3537.]

Depreciation — Telephone company — Annual allowance.

In a proceeding to fix the rates of a telephone company it was held that 5 per cent of the property value should be deducted from the gross revenue annually to provide for depreciation, where no amount had been set aside for this purpose.

Return — Operating expenses — Telephone rental to subscribers.

In determining the amount necessary for operating expenses for a telephone company, an allowance of an annual rental of $1.60 per year to subscribers owning their own telephones was made, as provided by conference ruling No. 15 of the Illinois Commission.

Return — Telephones — Percentage allowed.

A telephone company was allowed to increase its rates so as to produce a return on 6.4 per cent on the estimated value of its physical property.

[July 22, 1915.]

P.U.R.1915E.

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APPLICATION for authority to increase telephone rates. The existing rate was $6 a year for both business and residence subscribers who owned and maintained their telephones, and $3 per year for switching rural service subscribers. It appearing that the rates did not produce a sufficient revenue, the company was permitted to establish a rate of $13 per year for business telephones and $10 per year for residence telephones and $3 per year for switching rural subscribers. The company was directed to pay an annual rental of $1.60 per year to subscribers owning their own telephones, as provided by conference ruling No. 15.

By the Commission: Application in the above-entitled matter sets forth that the petitioner is a public utility engaged in the management and operation of a telephone exchange in the city of Colchester, McDonough county, Illinois; that it now has in effect a rate of $6 per year for both business and residence subscribers who own and maintain their telephones, and a rate of $3 per year for switching rural service subscribers; that the rate of $6 per year for business and residence telephones in the city of Colchester does not produce sufficient revenue to meet the requirements of the company.

Application is made for authority to establish the following schedule of rates:

Business telephones—subscriber furnishing the instrument..	$12.00	per year
Residence telephones—subscriber furnishing the instrument	9.00	" "

Subsequent to the filing of the application the petitioner was informed of the provisions of conference ruling No. 15. "In the matter of rates and charges applicable to subscribers who own their telephones," and on March 19, 1915, the petitioner filed an amended application, which provides for a rate of $13 per year for business telephones and a rate of $10 per year for residence telephones, all equipment to be furnished by the company.

Hearing was held at Springfield, Illinois, April 20, 1915. Louis A. Mull, secretary of the Colchester Farmers Telephone Company, appeared for the petitioner. No one appeared objecting.

From the testimony presented at the hearing, it appeared that the Colchester Farmers Telephone Company was organized pri-

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marily to serve the convenience of the stockholders, most of whom are farmers residing in the vicinity of Colchester. The capital stock of the company is $6,000, divided into 600 shares, of which 473 shares are outstanding. Formerly all of the subscribers served were stockholders in the company and the business was conducted under a mutual or co-operative plan. In response to a demand for service in the city of Colchester and on the part of persons in the contiguous rural districts who were not stockholders, the company extended its plant and provided such service. Persons in the city of Colchester desiring service were required to furnish their own telephones, the company providing the line and all other equipment. This practice has been strictly adhered to, there being only one subscriber, the Chicago, Burlington, & Quincy Railroad Company, whose telephone is furnished by the company.

The rural lines which were formerly a part of the property of the company are now owned and maintained by the subscribers connected therewith. Forty-one such lines are connected with the Colchester exchange, serving about 470 subscribers. These subscribers are classed as "rural service" subscribers and it is to these subscribers that the switching service rate of $3 per year applies.

It further appeared from the testimony that certain improvements in the central office equipment and outside plant are necessary; that a considerable part of this is chargeable to replacements, and that the company has no funds from which payment for such replacements and improvements can be made.

In support of the petitioner's statement that the earnings under the rates now in force and effect are insufficient to pay the operating expenses of the company and allow a reasonable amount for depreciation, a sworn statement of the earnings and expenses of the company for the period January 1, 1914, to January 1, 1915, was filed. According to this statement, the gross revenues for the year 1914 amounted to $2,631.03, and the expenses amounted to $2,807.77. Included in operating expenses, however, are certain items for material and equipment, amounting in total, to $655.84, which leaves the net operating expenses $2,151.93, making the net revenue for the year

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$479.10. No amount is included in the statement for depreciation.

Subsequent to, and in pursuance of, a stipulation entered into at the hearing, the petitioner submitted an inventory of the property of the Colchester Farmers Telephone Company. In accordance with said stipulation, this inventory was checked by the experts for the Commission, and their report embodied in and made a part of the record in the case. From an analysis of said inventory and report, and considering the age and general condition of the property as shown by the testimony presented at the hearing, it appears that the physical property of the company is worth approximately $5,500.

Inasmuch as no amount has been set aside for depreciation, it appears proper that at least 5 per cent of the property value should be deducted for this purpose from the gross revenue annually. At 5 per cent the annual depreciation charge will amount to approximately $275.

The annual gross operating expenses, therefore, including a necessary depreciation charge, would amount to $2,426.93. With an annual revenue of approximately $2,631, it appears that the utility is earning little net revenue at the present time. The utility faces certain increases in operating expenses on account of additional operators being required, and some further allowance to be made for the manager's salary, which is now insufficient, and that the stockholders are entitled to a reasonable return on the amount that they have invested in the property.

Under the rates proposed by the petitioner it is intended to allow each subscriber who owns his telephone an annual rental of $1.60 per year, as provided by conference ruling No. 15. The payment of such rental is properly chargeable to operating expense and will result in an increase of $342.40 per year.

The gross operating expenses, therefore, including the charge of $342.40 instrument rentals, and an allowance of $600 per year for an additional operator and an increase in the manager's salary, will amount to approximately $3,400 annually.

The revenue that will be derived under the proposed schedule of rates with the development as of April 1, 1915, is indicated by the following table:

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41 Business telephones @ $13.00 per year	$533.00
174 Residence telephones @ $10.00 per year	1,740.00
463 Rural service telephones @ $3.00 per year	1,404.00
Estimated net toll receipts per year	75.00
Gross revenue	$3,752.00

With a gross income of $3,752 per year, and operating expenses amounting to $3,400, the net revenue under the proposed schedule will amount to $352, which represents a return of 6.4 per cent on an investment of $5,500, the estimated value of the physical property.

It is therefore *ordered,* that the petitioner, Colchester Farmers Telephone Company, discontinue the rate of $6 per annum that now applies to all subscribers in the city of Colchester, and establish in lieu thereof the following schedule of rates:

Business telephones	$13.00	per year
Residence telephones	10.00	" ".
Switching rural service subscribers	3.00	" "

It is further *ordered* that such schedule of rates or charges shall become effective as of August 1, 1915, and shall be filed, posted, and published by said petitioner as provided by § 34 of an act entitled, "An Act to Provide for the Regulation of Public Utilities."

By order of the Commission, this 22d day of July, 1915. Dated at Springfield, Illinois.

INDIANA PUBLIC SERVICE COMMISSION.

IN RE GALVESTON WATERWORKS COMPANY.

[No. 895.]

Depreciation — Waterworks plant — Annual allowance.

A proper annual depreciation charge for a waterworks plant was found to be 1 per cent of its present value.

Return — Waterworks plant — Percentage allowed.

A proper rate of return on the investment in a waterworks property was found to be 7 per cent on its present value.

Accounting — Waterworks plant operated in connection with machine shop.

A waterworks company, operating its plant in connection with a machine shop, was ordered to install the accounting system prescribed P.U.R.1915E.

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by the Indiana Commission and properly to separate and apportion the expenses of the waterworks plant.

Discrimination — Water — Free service.

The practice of a waterworks company in furnishing free service to certain consumers was ordered discontinued as discriminatory.

[July 23, 1915.]

APPLICATION of the petitioner, a waterworks company, for authority to increase rates; granted. The new schedule of rates appears in the order.

By the **Commission**: On the 1st day of August, 1914, the Galveston Waterworks Company filed a petition before this Commission, asking authority to increase the schedule of rates charged by the company upon January 1, 1915. This schedule of rates and charges was set out in the petition in words and figures as follows:

	Flat Rate.
Bath tub	$3.00 per year
Closet	5.00 " "
Lavatory	2.00 " "
Dentist	5.00 " "
Livery barn	20.00 " "
Household purposes	5.00 " "
Street and lawn	5.00 " "
Steam boilers	20.00 " "
Barber shop	5.00 " "
General store	5.00 " "
Doctor's office	5.00 " "
Town fire protection	375.00 " "

The petition further alleges that the present rates are unreasonably low and not compensatory; that the same afford no return on the investment; that the operating expenses exceed the operating revenue; that for the year 1913 the total revenue was $1,310 and the operating expense, including taxes, was $2,331, leaving a net deficit of $1,021.

The petition prays that the Commission, after investigation, fix an equitable rate.

On the 10th day of August, 1914, an answer was filed by the respondent, alleging in substance that William H. Sprinkle is the owner of record of the franchise claimed to be owned by the petitioners, and says that such William H. Sprinkle should be made a party hereto to answer to the rights he may have in such franchise. The answer prayed that said William H. Sprinkle be made a party hereto and that further proceedings be stayed until he answer to his rights herein.

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On the 28th day of July, 1914, the Galveston Waterworks filed with the Public Service Commission of the State of Indiana a duly executed declaration of its intention to surrender its franchise in the town of Galveston and accept in lieu thereof an indeterminate permit.

An order of this Commission was made and approved in this matter August 4, 1914.

The respondent filed a second answer alleging in substance that the appraisal made by the Commission May 1, 1914, was too high.

On the 23d day of April, 1915, a hearing was held on the issues before the Commission at Galveston, Indiana, and all parties were represented.

The staff made and submitted a tentative valuation of the Galveston Waterworks Company of $8,691 present value. Evidence was introduced by the respondent tending to show that the cost of trenching and laying mains was fixed too high, and we therefore reduce this item $1,191 and fix the value of the plant at $7,500.

The Galveston Waterwarks Company is operated in connection with a machine shop, both being owned, managed, and operated by the petitioner, Mr. Sam Sprinkle. Very frequently while the gas engines are being used to drive the line shaft connected with the machinery employed in machine work, water is pumped into the gravity tank. The result is an unfathomable confusion of operating expenses, as the accounting system used in the past and still used does not permit of an apportionment of expenses between the waterworks and machine shop. This applies to superintendence, labor, oil, both fuel and lubricating, general repairs, taxes, and all other expenses incident to the operation of the waterworks and machine shop.

The operating expenses submitted by the petition for the year ending April 1, 1914, are set out in words and figures as follows:

Gasolene	$600.00
Cylinder oil	15.00
Machine oil	4.80
Cup grease	2.00
Salary mechanic and general fireman	960.00
Wages paid laborers	730.00
General repairs	20.00
Taxes	24.00
Total	$2,355.00

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This was less than the expense found in a report made by our accountants, but as that report was founded on an estimate of expenses made by Mr. Sprinkle, and the above statement comes from the same source, made under oath at the hearing, we will use the above statement.

The evidence shows that the operating expenses of both the waterworks company and the machine shop are intermingled in the above total beyond possibility of separation. We are compelled to estimate the expenses chargeable to the operation of the waterworks, and therefore fix the operating expenses of the Galveston Waterworks at $1,570, or two thirds of the total. There was some evidence to the effect that two thirds of the labor was chargeable to the utility, and we base our estimate on the only tangible evidence introduced on the apportionment of the expense. Mr. Sprinkle testified on cross-examination there was no way to determine the amount of oil used for the machine shop and the amount used for the waterworks. We find a proper depreciation charge is 1 per cent of the present value, or $75 per annum, and a proper rate of return on the investment 7 per cent, or $525 per annum. It is therefore necessary to fix a rate that will yield $1,570 operating expenses, $525 return on the investment, and $75 depreciation, or a total of $2,170.

There are no meters used and all charges are made upon a flat rate basis. The plant supplies approximately 112 consumers, including the town, which owns 25 fire hydrants, and pays $15 per year for each of them. We find the annual revenues from the sale of water at the present rate for all purposes yields $1,375 gross revenue.

The petitioners admitted in the hearing that the main on Griffith street in the town of Galveston was inadequate for fire protection.

The Commission finds from the evidence that leaks have existed in the water mains for unreasonably long periods of time, and that this condition creates waste, lowers the pressure, and impairs the service.

The Commission further finds that the accounting system now used by the petitioner is inadequate and does not conform with the law or that system prescribed by the Commission; that it is impossible under the present system to properly separate

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or apportion the operating expenses between the waterworks and the other business conducted by the petitioner.

The records of the Galveston Waterworks Company disclose that for certain classes of service to certain consumers there is no charge made. The Commission finds that this practice is discriminatory and should be discontinued.

The Commission being fully advised in the premises,

It is therefore *ordered* by the Public Service Commission of the State of Indiana that the following schedule of rates, tolls, and charges, and the following improvements and practices, be imposed and effected, observed and followed by the Galveston Waterworks Company, from and after May 1, 1915:

Schedule of Rates.

Lavatories	$3.00	per	annum
Baths	5.00	"	"
Closets	7.00	"	"
Single horses	2.00	"	"
Each additional horse	1.00	"	"
Domestic users	9.00	"	"
Domestic users and sprinkling	12.00	"	"
Sprinkling only	7.00	"	"
Hotel toilets	15.00	"	"
Soda fountain	12.00	"	"
Bakery, restaurant & soda fountain	16.00	"	"
Barber shop, two chairs and public bath	15.00	"	"
Barber shop, 2 chairs	10.00	"	"
Green house 12 H. P. boiler	15.00	"	"
Livery barn	30.00	"	"
Doctor's office	7.00	"	"
Lodge room	$5.00 to 7.00	"	"
Dentist's office cuspidor	4.00	"	"
Washing automobiles	3.00	"	"
Domestic boilers	1.50	"	"
General stores lavatories	7.00	"	"
Public toilets	10.00	"	"
Public hall toilet & lavatory	12.00	"	"
Pool	7.00	"	"
Depot	10.00	"	"
50 H. P. elevator boiler	37.50	"	"
Fire hydrants each	25.00	"	"

It is further *ordered* by the Public Service Commission of Indiana that the petitioner immediately proceed to install the same class and size of main on Griffith street in Galveston, Indiana, as is furnished other streets in that town.

It is further *ordered* by the Public Service Commission of Indiana that the petitioner immediately install the accounting system prescribed by the Commission, and properly separate and apportion the expenses of the waterworks plant.

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It is further *ordered* by the Public Service Commission of Indiana that the practice of furnishing water without making the proper charge set out in the schedule be discontinued, and that in the future the schedule be strictly adhered to in making charges for water.

It is further *ordered* by the Public Service Commission of Indiana that the petitioner immediately repair all leaks in the waterworks system, and whenever in the future such leaks occur to repair them with due diligence.

It is further *ordered* by the Public Service Commission of Indiana that the Galveston Waterworks Company shall conform its depreciation account, for its property used wholly for the production and distribution of water, to the rate hereinabove ascertained and determined.

LOUISIANA RAILROAD COMMISSION.

IN RE SEPARATE COMPARTMENTS FOR WHITE AND COLORED PASSENGERS.

[Order No. 1920.]

Service — Railroads — White and colored passengers.

Railroad companies operating in Louisiana are required to furnish separate coaches, or coaches containing separate compartments for white and colored passengers; except that colored prisoners in charge of white officers, and colored nurses or maids traveling with white children or ladies, are permitted to travel in coaches or compartments provided for white passengers.

[July 20, 1915.]

ORDER for separate coaches or compartments for white and colored passengers.

By the Commission: At a general session of the Railroad Commission of Louisiana, held in its office in the Capitol at Baton Rouge, Louisiana, on the 20th day of July, 1915, it was, after due consideration,

Ordered, that rule No. 49 of the Rules and Regulations of this Commission, as revised to January 1, 1915, be amended, and as amended adopted, so as to read as follows:

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RULE.

Separate Compartments for White and Colored Passengers.

Every railroad operated in this state shall furnish separate coaches, or coaches containing separate compartments, on its trains carrying passengers, for white and colored passengers; provided, however, that white sheriffs or their deputies, in charge of colored prisoners, and colored nurses or maids traveling with white children or ladies, may ride in coaches or compartments provided for white passengers.

All orders, rules, or regulations in conflict herewith are canceled.

By order of the Commission, Baton Rouge, Louisiana, July 20, 1915.

Shelby Taylor, Chairman; B. A. Bridges, John T. Michel, Commissioners.

LOUISIANA RAILROAD COMMISSION.

RAILROAD COMMISSION OF LOUISIANA

v.

RAILROADS.

[Order No. 1921; Case No. 2318.]

Service — Railroads — Switching.

Movements of freight between points within switching limits in cities or at terminals constitute transportation, where the shipment begins and ends within such districts, and is not preceded or followed by a transportation service for which freight charges are assessed, and such movements will be treated as transportation movements between separate shipping points.

Rates — Railroads — Switching charges.

Railroad companies furnishing empty cars to be loaded were authorized to make an extra switching charge of $3 per car for such service between points within their switching limits in cities or at terminals, where they receive no freight revenue in such districts for the car other than a switching charge, provided that lower switching or intra-city or intra-terminal rates, or rates for furnishing cars, are not advanced.

[July 21, 1915.]

INVESTIGATION by the Commission of intra-city or intra-terminal switching charges. Order establishing rates, rules, and regulations for switching and car rental charges.

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By the Commission: After due notice to the railroads operating in Louisiana, the Commission made a complete investigation into the matter of switching charges where car rental is assessed, having previously notified the carriers that car rental must be abolished. The carriers have filed tariffs which in effect add to their rates for switching cars within their switching limits to any point in Louisiana, $3 per car when the carriers furnish the empty car to be loaded. These rates, published in the tariffs filed, are submitted to the Commission, not as car rental, but as reasonable rates for performing the service of switching cars between points within switching limits. As the matter has been before the Commission for some time, a confusion is likely to result by a continuance of the present conditions; therefore, we will accept the tariffs as filed by the carriers without prejudice to any party desiring to file further proceedings.

In order that the switching charges may be uniform, it is considered best to make and establish switching rates for each of the carriers operating in the state. It may be well to announce at this time that the Commission regards movements of freight between points within switching limits in cities or at terminals as transportation where the shipment begins and ends within such districts, and is not preceded or followed by a transportation service for which freight charges are assessed; and such movements will be treated by the Commission as transportation movements between separate shipping points.

The question of establishing a tariff of joint rates for movements of freight over two or more lines within the New Orleans switching district was discussed at the hearing. It is the opinion of this Commission that a joint tariff of rates for local movements of freight between points in the city of New Orleans should be published and filed with as little delay as possible.

The premises considered, it is

Ordered that the following rates, rules, and regulations governing intra-city or intra-terminal movements of freight at all points in the state of Louisiana where switching districts are established be, and the same are hereby, established, effective August 1st, 1915, for all railroads operating in the state of Louisiana, *viz.:*

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(a) Unless otherwise specifically provided, where the carrier furnishes an empty car to be loaded, an extra switching charge of $3 per car will be made. This charge will not be made on shipments on which the carrier or carriers receive freight revenue other than a switching charge.

(b) The extra switching charge specified in paragraph "a" will not be assessed by any railroad where the shipper or consignee, whose goods are being handled, furnish their own cars.

(c) Car rental charges as specified herein may be eliminated upon the application of any carrier to this Commission for authority therefor.

It is further—

Ordered that rates in effect which provide for the furnishing of cars, or when switching or intra-city or intra-terminal rates are lower than those hereinabove prescribed, they shall not be advanced.

It is further—

Ordered that authority No. 10,054-R, issued to the Louisville & Nashville Railroad Company on June 24th, 1915, approving its supplement 52 to its tariff GFO No. 1931, be, and it is hereby, canceled.

All rates, rules, regulations, authorities, tariffs, or orders in conflict are hereby canceled.

By order of the Commission, Baton Rouge, Louisiana, July 21, 1915.

Shelby Taylor, Chairman; B. A. Bridges, John T. Michel, Commissioners.

MAINE PUBLIC UTILITIES COMMISSION.

IN RE MAYOR AND ALDERMEN OF THE CITY OF ROCKLAND.

[R. R.–41.]

Constitutional law — Contract between utility and city — Effect on right to regulate.

A city and a street railway company cannot, by private agreement, deprive the Maine Commission of the jurisdiction and powers given it by § 75, chap. 51 of the Revised Statutes, providing that bridges

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erected by any municipality over which any street railroad passes should be constructed and maintained in such a manner and condition as to safety as the Board of Railroad Commissioners may determine.

Apportionment — Repairs to bridge.

A city was ordered to pay two thirds and a street railway company one third of the necessary expense of repairing a highway bridge over which the tracks of the street railway were laid.

[July 20, 1915.]

PETITION alleging the dangerous condition of the Maverick Street Bridge, and requesting action on the part of the Commission in order that the same might be remedied.

Appearances: E. K. Gould for petitioners; Hon. Wm. T. Cobb for respondent.

By the Commission: On May 24th, 1915, the mayor and aldermen of the city of Rockland presented to this Commission a document, in the form of a petition, therein calling attention to an alleged dangerous condition of a highway bridge in Rockland, known as the Maverick street bridge, and requesting action on our part in conformity with § 75, chapter 51, of the Revised Statutes.

Section 75 does not, in terms, authorize a petition of any sort, but provides: "Bridges erected by any municipality, over which any street railroad passes, shall be constructed and maintained in such manner and condition, as to safety, as the Board of Railroad Commissioners may determine. Said Board may require the officers of the railroad company and of the municipality to attend a hearing in the matter, after such notice of the hearing to all parties in interest as said Board may deem proper." We feel, however, that the method pursued by the authorities at Rockland was a proper one by which to call our attention to an unsafe condition of a highway bridge over which a street railway passes, and we therefore proceeded to "require the officers of the railroad company and of the municipality to attend a hearing in the matter" by giving to the above-named officers a notice to attend a hearing at the offices of the Commission, at Augusta, on June 22d, 1915, at 10 o'clock in the forenoon. Hearing was had at the above named time and place, and notice as ordered was proven to have been given. The city and the railroad was each represented by counsel.

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We find that the structure mentioned in the petition is the kind of bridge referred to in said § 75. It was admitted that the Rockland, Thomaston, & Camden Street Railway passes over said bridge, and that said bridge is in need of repairs, renewals, and strengthening of parts, and we so find.

The only other issue between the municipality and the railway grew out of the following situation: Some time prior to October 23d, 1901, this same bridge became dangerously out of repair by reason of a cave-in, and the representatives of the city and the railway met and discussed the matter of repairs. It seems that many years before that time a lime quarry had been operated, and in such operation a tunnel under the highway had been made. In 1901, or about that time, signs of a settling of the road over this tunnel were noticed.

At the above-named conference the officers of the railway urged the putting in of a steel bridge as the only safe and permanent repair, and that a dry lime rock wall 40 feet high would not stand. The city insisted on the lime rock wall, and this was built, at a cost of about $1,300. Subsequently negotiations resulted in the payment by the railway of the sum of $500 as its share of the repairs. The railway now claims that the payment of that $500 absolutely absolved it from liability to pay any further sum, regardless of the condition of the bridge now or in the future. This claim is based on the following facts: On October 7th, 1901, the city council of Rockland passed the following order:

"Ordered, that the mayor be and is hereby authorized to make a contract of settlement as to the matter of the repair of the Maverick street bridge with the Rockland, Thomaston, & Camden Street Railway Company, and to sign all necessary agreements and receipts in relation thereto, the said railway paying not less than $500 to said city."

On October 23d, 1901, the railway gave its check for $500 to the city, and received the following acknowledgment:

"Whereas the city of Rockland has repaired the cave-in on Maverick street at what is known as the Maverick street bridge by virtue of an understanding with the Rockland, Thomaston, & Camden Street Railway, and has had full charge and control

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of said repairs, and has undertaken to do and represents that it has done same in a thorough, workmanlike, and permanent manner; and whereas said city by vote of its city government has authorized its mayor to make settlement thereof, and said mayor and said railway have agreed upon the amount which said railway should pay as its part of the expense of doing said work as aforesaid.

"Now therefore, I, Edward K. Gould, mayor of said city, duly authorized, hereby contract to receive and do receive and acknowledge the payment of the sum of $500 from said railway in full payment to said city for the performance of said work in manner aforesaid and in full discharge of said railway from all claims therefor.

City of Rockland, Maine,
Edward K. Gould,
Mayor."

October 23, 1901.

The railway now insists that this is an agreement on the part of the city that the repairs as made placed the bridge in good repair forever, and that the railway would never be called upon to pay any further sum for future repairs. We do not feel that this is the legal effect of the above vote and receipt; but, however this may be, the city and the railway cannot by private agreement deprive this Commission of the jurisdiction and powers given by § 75. If it were not for the fact that a public utility, *viz.*, this street railway, passed over this public highway bridge, this Commission would have no jurisdiction over repairs. The fact of the use of this bridge by this public utility, and the additional fact that the bridge is unsafe for this public use, makes the public one of the interested parties and the city and the railway, jointly, the other party. Having found that this bridge is in need of repairs, it is our plain duty to act; and we have the authority and it is our duty to determine who shall bear the expense. Under all the circumstances we feel (and so decide) that the railway shall pay one third, and the city two thirds, of whatever may be the amount of such repairs, renewals, and strengthening of parts as may be finally ordered.

While the statute makes it the duty of this Commission to

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finally determine what repairs are necessary, we feel that the city and the railway should be given an opportunity to suggest what is really necessary and practical to be done. We therefore direct the city of Rockland and the Rockland, Thomaston, & Camden Street Railway within fifteen days to either jointly or separately submit to this Commission, in writing, suggestions as to the manner and extent of the repairs, renewals, and strengthening of parts deemed necessary to make said Maverick street bridge safe for the uses to which it is put.

Final order will later be made by this Commission, and the case is not now closed.

Given under the hand and seal of the Public Utilities Commission, at Augusta, this 20th day of July, A. D. 1915.

Public Utilities Commission of Maine, Benjamin F. Cleaves, Wm. B. Skelton.

MARYLAND PUBLIC SERVICE COMMISSION.

A. W. LYMAN

v.

UNITED RAILWAYS & ELECTRIC COMPANY OF BALTIMORE.

[Case No. 813; Order No. 2452.]

Service — Extension — Street railways — Deferred because of business depression and diminished revenue.

Compliance with an order requiring a necessary extension to a street railway line was deferred about ten months on account of the decreased revenues of the utility and of the general business depression, the company agreeing meanwhile to maintain a bus service sufficient and adequate to meet all reasonable needs of the traffic, and to operate the same without extra charge to passengers either going from or coming towards the city.

[July 30, 1915.]

COMPLAINT asking for an order requiring extension of street railway line; order granted requiring extension of a portion of the service required, and compliance therewith deferred because of the decrease in the revenues of the utility and of the general business depression.

P.U.R.1915E.

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Timanus, Commissioner: This case was instituted before the Commission on the 2d day of June, 1914, and after numerous delays and various postponements, the hearing and arguments were completed on March 23, 1915, since which time the testimony and exhibits and the law in the case have been considered by the Commission.

Under the offer of the company to make an extension of its Columbia avenue line for a distance of 2,100 feet, hereinafter referred to, it becomes unnecessary to discuss the legal propositions involved in the controversy, such as the obligation imposed upon the defendant corporation by its profession of service to the suburban settlements of Baltimore city, and the right of the Commission to compel extensions of its lines.

Soon after the conclusion of the hearing, the Commission reached the unanimous opinion that some relief ought to be granted to the populous neighborhood which would be benefited by the extension of the Columbia avenue line. The Commission concluded that the public convenience, as well as the obligation of the defendant, require that this line should be extended from its present terminus at Gwynn's Falls, a distance of about 2,100 feet, to the bridge over the Baltimore & Ohio Railroad tracks at the top of the hill in Morrell park.

It is estimated by the defendant corporation, as well as by our own engineers, that it will cost approximately $40,000 to make the extension as above. We have deferred passing a peremptory order requiring such extensions, because of the company's diminished revenue, as well as from the general business depression prevailing in the city of Baltimore and throughout the country. These considerations, however, cannot permanently prevent the Commission from passing an order that, we think, will make an improvement in the service given to the neighborhood in question, although it has made us give heed to a request on the part of the company for a postponement of the time when the order shall become effective.

By the offer made to the Commission on the 29th day of July, 1915, the respondent expressed a willingness to construct a double-track extension of their Columbia avenue line from Gwynn's Falls to the railroad bridge above referred to, being a

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distance of about 2,100 feet, on or before the 1st day of May, 1916, and to maintain meanwhile between Gwynn's Falls and the bridge aforesaid a bus service which shall be sufficient and adequate to conveniently meet all reasonable needs of the traffic between those two points, and to operate the same without extra charge to any of the passengers either going from or coming towards the city.

The Commission, in view of all the aforegoing circumstances, and others which it is not necessary to enumerate in this opinion, has deemed it best for the interests of all concerned to adopt the offer so made by the respondent corporation. As respects the complainants in these proceedings, it means merely a postponement of the establishment of the service they have asked for, to a point where the Commission feels justified in requiring it to be given, and we find justification for the postponement of the date on which the extension shall be completed in the financial situation to which we have above alluded.

The Commission has never felt that the situation and circumstances justified them in compelling an extension of this Columbia avenue line for the full distance asked for in the complaint filed in this case, it being our judgment, that the distance of 2,100 feet is all that can be reasonably asked for at the present time.

MICHIGAN RAILROAD COMMISSION.

IN RE SOUTHERN MICHIGAN TELEPHONE COMPANY.

[D-914.]

Return — Consolidated company — Necessary investments for future.

Rates paid on the amount invested by a telephone company previous to a merger have no bearing or relation to the rates to be charged in the future, which must in all fairness be based on the necessary investment now and in the future in use for the purpose of furnishing the quality and quantity of service demanded by the subscribers.

Return — Telephone company — Deficit.

Proposed increases in the rates of a telephone company cannot be said to be unreasonable where they produce a revenue hardly sufficient to cover a deficit under existing rates, and are not higher than rates in other parts of the state where like quality of equipment is used and service given.

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Rates — Telephone — Toll charges.

A toll charge at the rate of 10 cents for the first 12 miles or fraction thereof, and 5 cents for each additional 8 miles or fraction thereof for all messages going to or through two or more exchanges, and a charge of 5 cents to nonsubscribers for calls within any exchange limit, is in accordance with the practice of telephone companies in Michigan, and is reasonable and warranted, in view of an investment in toll lines of $291,320.09, and in view of the fact that a deficit from existing rates is not covered by proposed increases in rentals asked for.

Rates — Telephones — Switching service.

A telephone company was authorized to increase switching charges for rural telephone companies connecting with its switchboard from $3 a year to $4.50 a year.

[July 23, 1915.]

APPLICATION of petitioner, a telephone company, for leave to increase rates, rentals, and charges. It appearing that the company was operating under a deficit, and that the proposed rates would not be sufficient to cover such deficiency in revenue, a temporary order was issued that petitioner be allowed to enjoy the benefits of certain increased rates for the term of one year for the purpose of ascertaining what results the new rates would produce. At the expiration of such period the company was ordered to present to the Commission a detailed statement of earnings and expenditures for such year, and upon such showing it was stated that the temporary order would be approved or modified as the conditions justified. The schedule is shown in order.

Appearances: John W. Adams, E. E. Palmer, Dallas Boudeman for petitioner; W. H. Lockerby, Milo D. Campbell, W. G. Cowell for protesting subscribers.

By the **Commission**: Telephone service prior to December 10, 1914, in the southwest portion of the state, was given by the Michigan State Telephone Company, the petitioner (Southern Michigan Telephone Company), and several other independent and mutual telephone companies. These companies, in many instances, were organized originally not for profit, but for neighborhood convenience, and extended to each other free service. Whether as the result of better care and management or more favorable conditions, some were more successful than others, and by giving good service were able to expand and quite successfully meet the demands of the locality; in some instances, however,

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serving only the people of a single township. In other instances these lines were extended into villages, towns, and cities, and there established exchanges, and the establishment of the separate exchanges necessitated the maintenance by many subscribers of two or more phones. Some of the lines failed to be maintained so as to give good service, but these which were so maintained and thereby enabled to handle long-distance messages did not prove to be profitable. On the other hand, such subscribers as found it necessary to maintain two or more phones began to complain of the unnecessary burden imposed incident to such dual service.

Previous to December, 1914, applications were received by the Commission from the officers of the several companies operating in the counties of Branch and St. Joseph and adjoining territory for authority to buy, sell, and exchange certain properties, to the end that some one company might occupy a given territory, and, having this business to itself, might be able to reduce expenses, relieve subscribers of the expense of maintaining more than one phone, and be enabled to give better service. The stronger companies in that territory were the Michigan State Telephone Company and Southern Michigan Telephone Company, and applications were filed with the Commission by those companies for permission to exchange certain properties, and by the smaller companies for permission to sell their property to the Southern Michigan Telephone Company, which was to remain in that territory. Thus would be removed all duplication and effect a saving to such community of a large amount of money annually, as hereinafter shown. Proceedings were had upon such applications, and pending the decision thereon the regularly constituted authority of every city and village located in the territory affected, together with approximately three thousand subscribers, petitioned the Commission to allow the consolidation, thereby evidencing what might reasonably be accepted as the unanimous desire of the public in that territory.

As to the value of the property of the Southern Michigan Telephone Company, two appraisals had been made by two different parties at different times, as hereinafter referred to, and these were filed with the application. These appraisals, together with the appraisal of all the properties merged, were

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made before any exchange or sale of the several properties was concluded and the prices or value at which such properties were exchanged or sold was upon the valuation thus obtained, and which appeared to be satisfactory to all parties in interest, all of which more fully appears in the opinion filed by the Commission when the merger was authorized, and to which special reference is made.

It appears that among the exchanges taken over by the Southern Michigan Telephone Company there were some whose rates were less than charged by the Southern Michigan Telephone Company operating in the same territory, and the company, believing that its own rates, though higher, were insufficient to produce the necessary revenue that a reasonable up-keep and fair return required, and also to eliminate discrimination in accordance with the requirements of law, sent out notices of a proposed advance in rates. They did this, however, before obtaining from the Commission permission to do so. This was reported and the Commission advised the company not to make any advance in rates until a proper application for authority so to do had been made, a hearing had thereon, and order issued. At the hearing the proposed change in rates denoting an advance was protested by some of the subscribers, they being represented by counsel. At the same time that notices of this proposed advance in rates were sent out, a notice also of the proposed advance to be made in the switching charges for service rendered the roadway companies entering the exchange at Quincy was mailed, this exchange being one of the properties recently acquired by the Southern Michigan Telephone Company.

At the hearing, counsel for protestants contended that the value of the combined properties, and especially that of the Southern Michigan Telephone Company, as shown by appraisal submitted, was excessive and unreasonable, and only paved the way for the company to demand, in order to produce a reasonable return thereon, a higher rate than was necessary. Whereupon, to the end that the Commission's previous investigations might be verified and the public interest fully protected, the Commission ordered an audit of the books of the Southern Michigan Telephone Company by the Detroit Trust Company.

The property of the Southern Michigan Telephone Company

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was appraised in 1912 by Mr. W. O. Morsman, of Chicago, an experienced telephone engineer of good repute, and, in 1914, or two years later, the Manufacturers Appraisal Company of Cleveland appraised the property of the Southern Michigan Telephone Company and the result of such appraisal approved the work and figures of Mr. Morsman as made, and showed the value of the same property to that date. To the end that as such reliable information as possible might be obtained for the guidance of the Commission, Mr. C. B. Hall, a telephone expert in the employ of the state, was directed to make a careful examination of both the physical and operating conditions of the several exchanges which composed the new or merged property, and his final figures show that the values at which the several properties have been charged into capital account of the Southern Michigan Telephone Company are approximately correct. At the time that the audit of the books of the Southern Michigan Telephone Company was being made, there was present an expert accountant setting up the new system of accounting as prescribed by the Interstate Commerce Commission, and he too became conversant with the conclusions reached by the Detroit Trust Company making the audit, and it appears that when the audit was finished the parties joined in the statement that no evidence had been found or presented showing that any misappropriation of funds had been made.

It is admitted that the old books of the Southern Michigan Telephone Company, containing a record of its operations previous to 1912, when the Morsman appraisal was made and new books were opened (except the minute book, giving a complete record of all meetings where authority was given to the officers to make any disposition of stock or bonds or use of cash), had been destroyed. From this original record, however, the Trust Company states it was able to secure sufficient data to guide it safely in determining whether or not the capital account of the company was unduly large, or contained entries not properly belonging there.

The total amount of items about which there was any question whatever, as being properly chargeable to capital account (and which the Interstate Commerce Commission in its form of accounting contend should be so treated), aggregate $196,062.52,

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and this amount, upon the recommendation of the Commission's expert, was deducted. We do not feel, therefore, that the absence of the old books of the company interfered with obtaining such information as enabled the Trust Company, and later the Commission, to intelligently pass upon the question at issue, *viz:* the present value of the property, and it appears to us these are the important questions, for the rates paid on the amount invested by the company previous to the merger have no bearing upon or relation to the rates now proposed to be charged in the future, which must, in all fairness, be based upon the necessary investment now and in the future in use for the purpose of furnishing the quality and quantity of service demanded by the subscribers.

Petitioner contends that the increased rates and rentals asked for will produce no greater sum than what might be deemed a reasonable return upon the money actually employed, after paying necessary maintenance and operating expenses, and a study of the figures shown on page 8 would appear to support their contention.

For additional information, a representative of this Commission, as previously stated, made a personal investigation of the physical and operating conditions of each and every exchange named in the application, and also the Detroit Trust Company has made to this Commission a report as of May 31, 1915, verifying the capital and plant accounts of the Southern Michigan Telephone Company, showing when and where and under what terms and conditions the securities were issued and disposed of. From the foregoing may be summarized:

First: The record discloses no indication of fraud or misappropriation of funds.

Second: The facilities are ample and of such nature and in such condition as to enable the company to render adequate service.

Third: That an increase in revenue seems necessary to protect the investment.

As bearing upon the first matter mentioned, there has been filed the official report of the Detroit Trust Company, as above stated, substantiating the accounts of "Plant in Service," "Intangible Capital," "Capital Stock," and "Bonds," in conforming the

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charges to the schedule of accounts as prescribed by the Interstate Commerce Commission as follows:

1. Plant in service (per exhibit filed)	$1,190,461.18
2. General equipment (tools, etc.)	4,812.72
3. Intangible capital (per exhibit filed)	55,563.18
4. Unamortized debt and discount expense	14,237.29
5. Other deferred debts (including merger items in suspense)	48,619.30
6. Total recorded in balance sheet	$1,313,693.67
7. Items lost in the accounts charged to surplus (difference between appraised structural value as inventoried in 1912 and fair book value)	157,565.36
8. Interest on merger loans	14,567.51
9. Realized depreciation on property sold	23,929.65
10. Total plant and expenditures on which stockholders should receive returns, as prescribed by the Interstate Commerce Commission accounting	$1,509,756.19
11. Capital stock—authorized $1,000,000—issued	$842,580.00
12. Bonds—authorized $500,000—outstanding	359,200.00
	$1,201,780.00

As to the second matter, "facilities and adequate service," this is fully covered by the inventory and appraisal made in 1912 by Mr. W. O. Morsman, as corroborated and fully substantiated by the Manufacturers Appraisal Company of Cleveland, Ohio, under date of May 15th, 1914, and also by the detailed report of our own representative, made from personal inspection and investigation.

Third, as to the necessity for increased revenue; conclusions are deducted from the balance sheet, income statement, and expense schedule, taken from the books of the company as of March 31, 1915, setting forth the actual figures for the first quarter, and from that, a recapitulation for the year, showing the following results:

Total telephone revenue for year on basis of actual first three months			$131,088.36
Total "operating" expense not including the following:		$145,744.16	
Total deductions:			
Uncollectible revenue	$689.92		
Taxes	10,582.36		
Rent, offices, etc.	4,996.24		
Interest on funded debt	21,315.00		
Other interest	2,805.52		
Amortization	946.64		
		$41,335.68	
Total deficit			$55,991.48
		$187,079.84	$187,079.84

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We think of the above "deductions" there will be no question but that at least the two items of taxes and rentals should be added to the operating expense as entirely dependent upon revenues for their payment and as properly affecting the rate which should be charged. These two items amount to $15,578.60, which, added to the operating expense of $145,744.16, totals $161,322.76. From this amount deduct the total revenues (not including tolls) of $131,088.36, and a deficit of $30,234.40 results. As shown elsewhere, the total increase in revenue from the increase in rates would amount to $25,071; that is, providing each subscriber continues his present class of service. It therefore seems evident that the proposed rates cannot be termed excessive or unreasonable in the gross return they will yield, when all the elements of expense, including a proper depreciation, are considered and will necessitate new economies to meet the new needs incident to operating the several properties under the merger. In fact, the rates will not be higher than in other parts of the state where like quality of equipment is used and service given.

Again, the necessity for increased revenue seems apparent when all figures are reduced to the average of each subscriber to the whole amount, as shown by the following tabulation from figures submitted:

Plant in service	Average station valuation	$110.15
Total recorded in balance sheet	" " "	121.67
Total investment and expenditures on which returns should be made	" " "	139.81
Not included in the above and which must be considered are the total of toll lines		$291,320.09
And the amount properly chargeable to the several exchanges but not distributed		32,236.21
		$323,556.30

Total revenue	Average per station		$15.36
Total operating expense and interest on bonds	" " "	$17.08	
Total deductions	" " "	4.84	
Deficit	" " "		6.56
		$21.92	$21.92

In addition to this showing of present deficit, there appears a saving to the subscribers in the communities involved in these

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applications, by eliminating duplications, $22,104, or an average of $3.09 per subscriber affected, and that the probable result of the rental increase as asked for would amount to $25,071, or $3.01 per subscriber of the community affected.

Dividends declared 1904 to 1912, inclusive, as shown by the audit, amounted to $267,482.21, and the depreciation for same period at five per cent not charged off would have been $216,181.40, showing that dividends were paid for that period instead of creating a depreciation fund, as should have been done.

Relative to that part of the applications affecting toll charges: The proposed rate is based on present practice of other telephone companies rendering similar service throughout the state, and appears reasonable and warranted in view of the investment in toll lines as shown in balance sheet and inventory, $291,320.09, before referred to, and also considering that the deficit as shown in exhibits offered in evidence is not covered by the increase in rentals asked for, and it appearing that the charge of toll between exchanges not only increases revenue and reduces operating expense, but improves the efficiency of that part of the service, is the basis for favorable decision on that portion of the applications.

Under separate notice, but made a part of these applications, as previously referred to, is the request for permission to increase switching charges for rural telephone companies connecting with the switchboard of the Southern Michigan Telephone Company at Quincy, Branch county, from $3 per year, as now charged, to $6 per year. From the testimony and evidence in support thereof it appears that the company considers its request well founded on the showing of operating expense at the Quincy exchange to be in excess of $6 per year per subscriber, but considering the charges of other companies for like service, and the advantages and enhanced opportunities for additional revenue through toll charges, it would seem reasonable to consider the present charge of $3 too low,—yet the requested charge of $6 too high. Hence the opinion that $4.50 per year for switching each subscriber is fair.

From all of the foregoing and the further fact that the committee and attorneys for subscribers in opposition failed to show error in the evidence from which these figures are taken, it is the opinion of this Commission that a temporary order should

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issue and the petitioner be allowed to enjoy the benefit of the rates named therein for the term of one year from the effective date thereof, and for the purpose of ascertaining just what results the new rates will produce, at the expiration of such period present to the Commission a detailed statement of earnings and expenditures for such year when, upon such showing, the above order should be approved or modified, as the conditions justify.

Lawton T. Hemans, Chairman, C. L. Glasgow, Commissioner, C. S. Cunningham, Commissioner.

ORDER.

Applications were filed in the above-entitled matter on March 27th, March 29th, and April 24th, A. D. 1915, together with proof of publication of a notice by the Southern Michigan Telephone Company in the "Burr Oak Acorn," "Coldwater Daily Reporter," and "Quincy Herald," newspapers of general circulation in the territory served by the telephone lines and facilities of the said telephone company, setting forth that on the 5th and 27th days of April, A. D. 1915, applications would be made to this Commission for authority to establish certain telephone rates for the subscribers of the telephone service furnished by the Southern Michigan Telephone Company, and order of hearings in pursuance of such applications having been fixed for April 21st, May 4th, and June 25th, A. D. 1915, at the office of the Commission in the city of Lansing, at which time Hon. John W. Adams, Hon. E. E. Palmer, and Hon. Dallas Boudeman appeared on behalf of said telephone company, and Hon. W. H. Lockerby, Hon. Milo D. Campbell, and Mr. W. C. Cowell, representing protesting subscribers. Testimony and evidence in support of such applications was submitted and the opposition failed to show error in same, and,

This Commission having duly considered said applications and the evidence offered and obtained in support thereof,

Therefore, by virtue of the authority vested in us by law, we do hereby authorize the said Southern Michigan Telephone Company to publish and make effective as of the 1st day of August, A. D. 1915, the following schedule of rentals, rates, and charges for service furnished by the lines and telephone facilities of the

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said Southern Michigan Telephone Company, as proposed in the published notices hereinbefore mentioned:

Telephone Rates and Charges for the Southern Michigan Telephone Company.

Coldwater and Union City Exchanges.

One party business	Net	Rate	$36.00	Gross	Rate	$39.00	per	annum
Two party business	"	"	30.00	"	"	33.00	"	"
Four party residence	"	"	15.00	"	"	18.00	"	"
Two party residence	"	"	18.00	"	"	21.00	"	"
One party residence	"	"	21.00	"	"	24.00	"	"
Rural party residence	"	"	15.00	"	"	18.00	"	"
Rural party business	"	"	18.00	"	"	21.00	"	"

Bronson and Quincy Exchanges.

Business telephone	Net	Rate	$24.00	Gross	Rate	$27.00	per	annum
Residence and rural	"	"	15.00	"	"	18.00	"	"
Rural business	"	"	18.00	"	"	21.00	"	"

Sherwood, Girard, Batavia, and East Gilead Exchanges.

Business telephone	Net	Rate	$18.00	Gross	Rate	$21.00	per	annum
Residence and rural	"	"	15.00	"	"	18.00	"	"

Sturgis and Three Rivers Exchanges.

One party business	Net	Rate	$36.00	Gross	Rate	$39.00	per	annum
Two party business	"	"	30.00	"	"	33.00	"	"
Four party residence	"	"	15.00	"	"	18.00	"	"
Two party residence	"	"	18.00	"	"	21.00	"	"
One party residence	"	"	21.00	"	"	24.00	"	"
Rural party residence	"	"	15.00	"	"	18.00	"	"
Rural party business	"	"	18.00	"	"	21.00	"	"

Burr Oak, Colon, Centreville, Constantine, Mendon, and White Pigeon Exchanges.

Business telephones	Net	Rate	$24.00	Gross	Rate	$27.00	per	annum
Residence and rural	"	"	15.00	"	"	18.00	"	"
Rural business	"	"	18.00	"	"	21.00	"	"

Jones, Leonidas, and Parkville Exchanges.

Business telephones	Net	Rate	$18.00	Gross	Rate	$21.00	per	annum
Residence and rural	"	"	15.00	"	"	18.00	"	"
Rural business	"	"	18.00	"	"	21.00	"	"

Wasepi exchange will be discontinued and the subscribers connected with the Colon, Mendon, and Centreville exchanges.

The net rate to apply if payment is made within the first thirty days of each calendar quarter. The gross rate to apply if payment is made after the first thirty days.

Rentals are payable at the office of the exchange to which the subscriber is connected.

A toll charge at the rate of 10 cents for the first 12 miles or fraction thereof, and 5 cents for each additional 8 miles or fraction thereof, will be made for all messages going to or through two or more exchanges. A charge of 5 cents will be made to nonsubscribers for calls within any exchange limit.

For switching charges for all rural lines or telephone com-

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panies connecting with the switchboard at Quincy, Branch county, $4.50 per annum for each subscriber, payable semiannually in advance.

The above rates to be and remain in effect for the term of one year from August 1, 1915, at the expiration of which time the petitioner will file with the Commission a detailed statement of all receipts and expenditures incident to the operation of the plant for such time, and, upon such showing, the Commission will either approve and continue in force the above order, or make such other order as, in the judgment of the Commission, the conditions justify.

Lawton T. Hemans, Chairman, C. L. Glasgow, Commissioner, C. S. Cunningham, Commissioner.

MONTANA PUBLIC SERVICE COMMISSION.

FARMERS' COMMITTEE OF LAUREL

v.

MOUNTAIN STATES TELEPHONE & TELEGRAPH COMPANY.

[Docket No. 476; Report and Order No. 125.]

Discrimination — Free telephone service.

A telephone company will not, upon buying out a competitor, be compelled to continue free toll service inaugurated during the period of competition, since, in addition to the fact that such service necessitates a separate investment, it is unlawful, because discriminatory.

Discrimination — Telephones — Special rental contract.

Special rental contracts by which older patrons of a telephone company are receiving rentals at different prices than are afforded later patrons are discriminatory, and, where such contracts are subject to cancelation on notice, the company should give notice, and, on the expiration of the time mentioned in the contract, should discontinue the service or enter into nondiscriminatory contracts.

[July 26, 1915.]

DEMAND for the re-establishment of free toll service formerly accorded the telephone patrons of Laurel and vicinity to Billings, and complaint as to discrimination in monthly rentals; complaint as to free toll service dismissed. It appearing that

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some of the patrons of the defendant Mountain States Telephone & Telegraph Company were receiving service at lesser rentals than were charged other patrons, by virtue of old special rental contracts, such contracts were ordered canceled and the service discontinued, or a new standard contract executed.

The appearances are set out in the opinion.

By the Commission: Hearing was regularly held at Laurel, Montana, April 7th, 1915, at 10:30 o'clock A. M., represented: Complainant, by Charles A. Taylor; defendant, by C. G. Cotton; Commissioners Hall, Morley, McCormick.

In this matter the complaint alleged that formerly the telephone patrons in Laurel and vicinity were served by the Mountain States Telephone & Telegraph Company and the Billings Automatic Telephone Company. During the period of rivalry free toll service was granted from telephones connected with the Laurel exchange to telephones connected with the Billings exchange by both operating companies.

The complainants assume that by reason of the fact that this free toll service was voluntarily granted, that it must have been profitable. Complainants allege that about October 1st, 1914, the Mountain States Telephone & Telegraph Company purchased the lines and equipment of the Automatic Company, and soon thereafter the defendant placed into effect a toll charge of 10 cents from phones connected with the Laurel exchange to phones connected with the Billings exchange. It is also alleged that flat rates for service now in force in the vicinity of Laurel, Montana, are not uniform, in that patrons pay various sums for monthly rentals; to wit, $1.50, $2, $2.25, and $2.75.

There was no testimony introduced sustaining the assumption in the complaint that because free toll service was granted during the period of competition, that the telephone exchange was profitable, nor could this fact be established without a physical valuation of the plant, taken in connection with the annual statement of the operation of the business. The Laurel exchange would then have to be charged with its overhead expense, including its share of the overhead expense of the general office. Depreciation charges would have have to be determined, and in fact all of the various items would have to be considered, as is

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lawful and customary in determining a reasonable rate for carriers and public utilities.

Free toll line service between Laurel and Billings might have been indulged in at the expense of some other exchanges not enjoying competition. It cannot be denied that a toll service is a valuable service and should be charged for on its merits. It is a present-day necessity, and to afford it, an investment must be made in a toll line connection separate and apart from that portion of the plant constructed for local exchange service. Apart from this argument, discrimination is unlawful. All other toll service in the state is chargeable under a uniform scale of rates, and this line must conform to the general rule and come within the provisions of the law.

The defendant and its predecessors in interest have contributed to this complaint by their competitive methods and by extending the lines from their Billings exchange into Laurel territory. Doubtless patrons have indicated a desire to be connected with the Billings exchange for their own convenience. The Billings exchange is the older, and the rural lines out of Billings had to be added to from time to time as new business was acquired, until the present situation has developed with the Billings connections far into Laurel territory.

It will be necessary at some future time to take a physical valuation of the telephone plants in Montana. This valuation, together with the record of operating expenses and operating income, will become a basis for determining the reasonableness of rates. Prior to taking this valuation, the rates must be standardized and discriminations discontinued. Of what value would a physical valuation be in determining a reasonable rate, if one community received a free service for which another community was being charged? For the present, in determining a reasonable rate, this Commission is confined to comparisons which are not altogether satisfactory. For the reasons given above, the Commission will hold that a charge of 10 cents for a two-number call and 15 cents for a special party call, between the Billings district and the Laurel district, or *vice versa,* is a reasonable charge.

It also appears that there are some old special rental contracts in existence whereby the older patrons are receiving rentals at

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different prices than afforded to many later patrons. This is discrimination and must be discontinued. The old contracts are subject to cancelation on notice, and the defendant should give the proper notice, and on expiration of the time mentioned in the contract, the service should be discontinued or a new standard contract executed.

Wherefore, in view of the testimony and of the foregoing statement of facts,

It is *ordered* that the petition of complainants be denied; that the defendant, upon receipt of a certified copy of this statement and order, give notice canceling all telephone rental contracts that are discriminations as defined above; and that said notice shall be no longer than the length of time provided for in each individual contract; and that the defendant shall, within thirty days from receipt of certified copy of this statement and order, file a revised schedule of standardized rates for Laurel exchange, based on the mileage block system.

Public Service Commission of the State of Montana.

NEBRASKA STATE RAILWAY COMMISSION.

IN RE INVESTIGATION OF THE REASONABLENESS OF THE MERCHANDISE AND COMMODITY TARIFFS OF RATES AND CHARGES BETWEEN STATIONS IN THE STATE OF NEBRASKA ON THE SEVERAL LINES OF RAILROAD.

Rates — Distance basis — Long and short haul.

Railroads operating between stations in Nebraska cannot apply to shipments from intermediate points in the state the rates under the tariff in general order No. 19 of the Nebraska Railway Commission, which requires carriers to apply the distance schedule of rates on traffic moving between stations in the state except as provided by certain rules, when the application of the terminal rates under the long and short haul clause of the Railway Commission act will make a lower rate.

[July 31, 1915.]

CONFERENCE Ruling No. 1 In Re General Order No. 19.

By the Commission: The long and short haul clause of the Railway Commission act prohibits common carriers from charg-

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ing more for a shorter haul than for a longer haul over the same line unless authorized so to do by the Commission.

The attention of the Commission has been called to the fact that certain of the carriers operating railroads between stations in this state have been applying the rates under the distance tariff in general order No. 19 from intermediate points, when the application of the terminal rates under the long and short haul clause would make a lower rate. The Commission, in the first paragraph of its general order No. 19, required carriers to "establish, maintain, and apply" the distance schedule of rates "on all traffic moving between stations in Nebraska . . . save and except as herein specifically provided." It further required the carriers to establish, maintain, and apply the schedule of rates and charges specifically set out in the order from certain "terminal" stations, and in establishing said rates and schedules to apply certain rules and regulations set forth in the order.

The said rules and regulations therein prescribed, among other things, provide:

"Rule 3. Rates obtaining under the distance tariff, exhibit 'C', must not be lower than specific rates named from an intermediate terminal station.

"Rule 4. Terminal short line distance rates only must not be used in finding rates at intermediate points."

Where a terminal rate is a "terminal short line distance rate," and is not to be used to find an intermediate rate under rule 4, clearly appears in the tariff, such rate being prefixed by a dagger point with a note at the bottom of the page prefixed by a dagger point, "Terminal rates only—see rule 4."

There was no intention on the part of the Commission in the promulgation of its general order No. 19 to relieve the carriers from the necessity of complying with the long and short haul clause provision of the statute, save and except as specifically provided under said rules 3 and 4. If such had been the intention of the Commission, the inclusion of rule 4 in the tariff would be superfluous.

The order must be interpreted as a whole, and when rules 3 and 4 are considered, it is clear that there is no justification for the carriers, under the first paragraph of the order, to assume that they are relieved from the necessity of complying with the

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provisions of the long and short haul clause, save and except as provided in said rules 3 and 4.

Made and entered at Lincoln, Nebraska, this 31st day of July, 1915.

Nebraska State Railway Commission, Henry T. Clarke, Jr., Chairman.

NEBRASKA STATE RAILWAY COMMISSION.

IN RE MONROE INDEPENDENT TELEPHONE COMPANY.

[Application No. 2227.]

Depreciation — Annual allowance.

An annual allowance of 6 per cent on the conservative reproduction value of the property of a telephone company was held necessary to cover depreciation.

Return — Telephones — Percentage on investment.

A slight increase in the rates of a telephone company was held justified where it appeared that it was not quite earning a return of 7 per cent upon its capital stock, that its business had been conducted with extreme economy, and that the business had reached such a point of development that expenses were sure to increase.

Rates — Telephones — Business lines.

A telephone company may charge a higher rate to business subscribers than to ordinary subscribers.

Return — Improvements and betterments — How to be provided for.

A telephone company was directed to provide for additions and betterments to its property in the future out of new capital secured through the sale of stock, rather than out of earnings at the expense of the service and the proper maintenance of property already in existence.

Return — Telephone — 7 per cent allowance.

A return of 7 per cent on the money actually invested by the stockholders of a telephone company was held not to be unreasonably high, especially where stockholders have made sacrifices in the form of labor and services in excess of their cash investment; but the company was forbidden to pay annual dividends of more than 7 per cent, in view of the fact that earnings had been improperly used to the detriment of the service and maintenance of property, and was ordered to devote any surplus beyond the amount necessary for such dividends to the maintenance of existing property and the betterment of the service.

[July 31, 1915.]

APPLICATION by telephone company to readjust its exchange rates at Monroe, Platte Center, and Tarnov, and to establish

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Expenses in the future will increase. The system has reached the point where it can no longer be operated on the present basis. The demand for improved service and up-to-date equipment is already pressing, as is indicated by service complaints registered with the Commission in recent months. Connection with the toll system of the Nebraska Telephone Company requires a higher standard of equipment and service than was necessary when only local service was rendered. If the company is to install and keep a modern system of bookkeeping,—and the Commission is of the opinion that it should,—another substantial item of expense will be added that is not now provided for. In view, therefore, of the present state of the company's finances and of the new conditions now to be met, it is clear that the slight increase asked for is justified. Moreover, the uniform rate to all classes of subscribers is contrary to the general practice, and a higher rate to business subscribers is justified by custom and by the experience of practically all other companies. It was largely on the ground of bringing the rates of this company in line with the standard practice in this state that the Commission unanimously approved an increased business rate for the Genoa and Newman Grove exchanges a year ago. The approval of this application will still further standardize the rates on applicant's system.

The poor condition this property is in at the present time and the improvements that must be made in the service make it imperative that the management shall put into the property every available dollar over and above a reasonable return on the actual investment. It has been the practice in the past to build as many extensions as possible out of the earnings. This has had the effect of increasing the size of the property at the expense of the service and of the proper maintenance of the property already in existence. In other words, more plant has been built than can be maintained on the present earnings. The time has come when this practice must cease. Additions and betterments must be provided for hereafter out of new capital secured through the sale of stock. A return of 7 per cent on the money actually invested by the stockholders the Commission regards as reasonable, particularly, as in this case, where the stockholders have made sacrifices in the form of labor and services in excess of their cash investment. In view of the condition of the property, how-

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ever, the Commission is of the opinion and so finds that the return should be limited to 7 per cent and that the surplus, should there be any, should be devoted to the maintenance of the existing property and the betterment of the service. None of the earnings should be expended for new property in the form of additions and extensions.

It is not the purpose of applicant to install metallic service at the present time, but an application is made for a schedule of rates covering such service so that it can be furnished if demanded. An additional investment will be required in every instance where metallic service is installed, and if any considerable number of subscribers demand it the entire system will have to be reconstructed. The schedule asked for is the average for such service in the state. In fact, considering the size of the system and the number of subscribers served and the connections with the large number of other exchanges, for which no added charge is made, it is somewhat lower. Under these circumstances the Commission regards it as reasonable and it will be approved.

ORDER.

It is therefore ordered that the Monroe Independent Telephone Company be, and the same hereby is, authorized to charge and collect, until the further order of this Commission, the following schedule of rates, applicable to its exchanges at Monroe, Platte Center, and Tarnov, same to become effective September 1, 1915:

Individual business	Grounded	circuit	$2.00	per	month
Individual residence	"	"	1.00	"	"
Farm line	"	"	1.00	"	"

These rates to be in addition to the cost of batteries.

It is further ordered that the Monroe Independent Telephone Company be, and the same hereby is, authorized to charge and collect the following schedule of rates, applicable to all the exchanges on its system, same to become effective September 1, 1915:

Individual business	Metallic	circuit	$2.50	per	month
Two-party business	"	"	2.00	"	"
Individual residence	"	"	1.50	"	"
Two-party residence	"	"	1.25	"	"
Business telephone on farm line, grounded circuit			2.00	"	"
Extension telephones			.50	"	"
Extension bells			.25	"	"

It is further ordered that the Monroe Independent Telephone

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Company be, and the same hereby is, notified and required to install a system of accounting that will clearly show the revenue received from all sources and its expenditure for the various purposes required by the company, said expenditures to be so separated as to show the amounts expended for new construction, maintenance, and depreciation, direct operation and general expense. Said system of accounts to be submitted to this Commission for approval, and to be installed on or before October 1, 1915.

It is further ordered that, until the further order of this Commission, the annual dividends to be declared and paid by the said Monroe Independent Telephone Company shall not exceed a sum equal to 7 per cent on the actual, outstanding capital stock.

It is further ordered that any surplus remaining out of the earnings, after all operating, maintenance, and depreciation expenses, and a dividend equal to 7 per cent on the outstanding capital stock, have been paid, shall be applied to the improvement of the service and the maintenance of the existing property; and, unless the approval of this Commission is first secured, none of such surplus shall be expended for the building of new lines or for any additions and betterments.

Made and entered at Lincoln, Nebraska, this 31st day of July, 1915.

Nebraska State Railway Commission, by Henry T. Clarke, Jr., Chairman.

NEBRASKA STATE RAILWAY COMMISSION.

NEBRASKA PORTLAND CEMENT COMPANY

v.

CHICAGO, BURLINGTON, & QUINCY RAILROAD COMPANY et al.

[Formal Complaint No. 271.]

Evidence — Presumption — Published rate as reasonable — Statute — Effect of competition.

Rates influenced by competitive conditions do not come under the provision of the statute that "the lowest rate published or charged by any railway company for substantially the same kind of service, P.U.R.1915E.

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whether in this or another state, shall, when introduced in evidence, be accepted as prima facie evidence of a reasonable rate for the service under investigation."

[August 7, 1915.]

COMPLAINT by the Nebraska Portland Cement Company against the railroads of Nebraska as to the rates charged for the transportation of cement. The Commission fixed the rate on cement from Superior to Lincoln at 7 cents per hundred weight, to Omaha 8½, to Beatrice 7; and modified general order No. 10 (see 7 Ann. Rep. Neb. S. R. C. 325) and its order in Formal Complaint No. 252 (see 7 Ann. Rep. Neb. S. R. C. 201) so that where the combination of terminal rates from Superior to the points Fremont, Lincoln, and Beatrice, plus the specific rates from those points to the points of destination, would produce a lower rate, such combination rate should apply as a maximum; provided, however, that where a two-line haul was involved, a 1½ cent arbitrary should be added.

Appearances: F. H. Gaines for complainant; Byron Clark, general solicitor, H. H. Holcomb, G. F. A., F. Montmorency, A. G. F. A., for the C. B. & Q. Railroad Company; A. A. McLaughlin, attorney, W. H. Jones, D. F. A., for the C. & N. W. Railway Company and C. St. P. M. & O. Railway Company; G. W. Hamilton, A. G. F. A., E. E. Hawley, rate clerk, for the Union Pacific Railroad Company; H. L. McReynolds, of the freight agent's office, for the C. R. I. & P. Railway Company; D. R. Lincoln, A. G. F. A., for M. P. Railway Company; James A. Rockwell, treasurer and sales manager, for Sunderland Brothers Company; Walt H. DeBolt, for The John H. von Steen Company; B. L. Glover, general traffic manager, for The Iola Cement Mills Traffic Association; H. C. Koch, general sales agent, for the Iola Portland Cement Company, Kansas City; W. S. Whitten, secretary, for Lincoln Commercial Club.

Clarke, Chairman: Complainant herein owns and operates a cement plant at Superior, Nebraska. All roads operating in Nebraska are made parties to the complaint, which attacks the reasonableness of the rates on cement in Nebraska, and particularly the rates obtaining from Superior, Nebraska, to points in the eastern part of the state, the complaint alleging that it is shut out

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from much of that territory by reason of lower and more favorable rates applying to said points from competing cement plants more distantly located.

The existing rates on cement on all the roads, except the St. Joseph & Grand Island Railway Company and the Chicago, St. Paul, Minneapolis, & Omaha Railway Company, were fixed by the Commission in its order in Formal Complaint No. 252 (see 7 Ann. Rep. Neb. S. R. C. 201) in which the Commission determined the mileage scale of rates applying to Class "D" in its general order No. 19 (see 7 Ann. Rep. Neb. S. R. C. 325), a just and reasonable basis for transportation of cement in carloads. Certain exceptions were made to the application of said scale, to wit: A terminal rate of 7 cents to Lincoln and Fremont and a terminal rate of 8½ cents to Blair, Omaha, South Omaha, Plattsmouth, and Nebraska City. Said terminal rates did not apply as a maximum to intermediate stations.

Formal Complaint No. 252 (see 7 Ann. Rep. Neb. S. R. C. 201) arose on the application of the complainant herein for commodity rates on cement from Superior, in which complaint the St. Joseph & Grand Island Railway Company and the Chicago, St. Paul, Minneapolis, & Omaha Railway Company were not made parties.

The closest plants to the borders of the state are, one at Des Moines, approximately 146 miles east of Omaha, another at Mason City, 250 miles east of Sioux City, another at Sugar Creek, 100 miles southeast from the extreme southeastern portion of the state.

The eastern portion of the state, the rates to which complainant particularly complains of, it is estimated involves 60 per cent of the cement consumption of the state.

Two questions are presented in the testimony and briefs of the complainant: First, rates from Superior to Lincoln and to Omaha; second, rates from Superior to other Nebraska stations, particularly in the eastern part of the state.

Complainants ask for a 5-cent rate to Lincoln, a distance of 119 miles, and a 6½-cent rate to Omaha, a distance of 174 miles, the Omaha rate being determined by a reverse application of the 1½-cent Lincoln differential over Omaha, applying on shipments originating east of the Missouri river.

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Complainants attempt to justify the proposed 5-cent rate to Lincoln by certain comparisons of rates voluntarily established by the carriers, and insist that under the section of the statute which provides that "the lowest rate published or charged by any railway company for substantially the same kind of service, whether in this or another state, shall, when introduced in evidence, be accepted as prima facie evidence of a reasonable rate for the services under investigation," said rates would determine a 5-cent rate from Superior to Lincoln as just and reasonable.

The defendants clearly proved that the rates relied upon by the complainants were affected by competitive conditions, and in order for the carriers publishing said rates to participate in the transportation of cement to large consuming markets, such as Kansas City, Denver, and Omaha, it was necessary to publish such rates. Where such competitive conditions obtain, rates so influenced do not, in our judgment, come under the provisions of the statute. To hold otherwise would mean the rigid application of the long and short haul clause, not only to intermediate stations, but on all systems and in all directions. The Commission is authorized by the same act to relieve the carriers in its discretion from the application of the long and short haul clause. *A fortiori* the Commission should exercise discretion in a rigid application of rates induced by competitive conditions.

In its order in Formal Complaint No. 252 (see 7 Ann. Rep. Neb. S. R. C. 201), this Commission reviewed at considerable length the rate adjustment to Nebraska stations from interstate points, as well as the rates then in effect between Nebraska stations, and it is unnecessary to review the matters therein contained.

The following table shows the rates from the various points of production:

Points of Production.	Omaha Rate.	Lincoln Rate.
Superior	8.5	7.
Mason City	8.	9.5
Des Moines	7.	8.5
Iola, Kansas	10.	11.5
Sugar Creek	8.5	10.

Upon consideration of the evidence and the argument, the

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Commission does not feel justified in changing its former ruling on the Lincoln and Omaha rates of 7 and 8½ cents respectively.

We are of the opinion, however, and so find, that a 7-cent rate on cement should apply from Superior to Beatrice, which is a recognized distributing center, is equalized with Lincoln and Omaha, etc., in general order No. 19 (see 7 Ann. Rep. Neb. S. R. C. 325), and is intermediate to Lincoln from Superior.

As stated above, the Class "D" rates, published in the Commission's order No. 19 (see 7 Ann. Rep. Neb. S. R. C. 325), formed the basis for the cement rates in its order in Formal Complaint No. 252 (see 7 Ann. Rep. Neb. S. R. C. 201), except as to certain terminals. While certain comparisons of rates on per-ton-per-mile basis from interstate points were presented in the hearing, the complainants virtually waive the reasonableness *per se* of the Class "D" basis in their brief. The Interstate Commerce Commission, in commenting on the per-ton-per-mile basis as a test of reasonableness, has said: "The revenue per ton per mile in itself is not a sufficient basis for a judgment regarding the reasonableness of a rate which yields that revenue." Nebraska State R. Commission v. Chicago, B. & Q. R. Co. 23 Inters. Com. Rep. 121–125.

Also, "The rate per ton per mile is but one of the many influences in rate adjustment, and in the present case its value of comparison is somewhat impaired." Ashgrove Lime & P. Cement Co. v. Atchison, T. & S. F. R. Co. 23 Inters. Com. Rep. 519–524.

There remains for consideration the adjustment of the rates provided in our order in Formal Complaint No. 252 (see 7 Ann. Rep. S. R. C. 201), from Superior to stations in the eastern portion of the state other than the terminal rates named therein.

The interstate rates on cement from the so-called Gas Belt in Kansas (and it is conceded in the record that, generally speaking, cement is sold on the Iola basis) were reviewed by the Interstate Commerce Commission in cases Nos. 4038, 3904, and 4485. In approving of the existing rates to Nebraska stations, Commissioner Clements said: "The record establishes that an over-production of from 40 to 50 per cent in cement and a rapidly diminishing supply of natural gas, which rendered manufacture cheap in the past, have had a serious effect upon the cement trade

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in this field, and complainant's present troubles may be due to some extent to this cause. But, however this may be, treating the matter from a transportation standpoint, and considering all the facts, circumstances, and conditions appearing of record, we do not feel that the interests of justice require the granting of the prayers of the petitions as to Kansas City, Missouri, Iowa, Nebraska, Colorado, South Dakota, or Montana." (p. 525.)

The rates above referred to are so-called group rates to eastern and southeastern Nebraska points. The stations in the extreme eastern and southeastern portion of the state are generally given the same rate as Omaha, while the Lincoln rate is carried as a blanket to all stations between the extreme eastern stations and those stations on a line approximately north and south with Lincoln. To all stations west of said line the rates are graded up from the cheapest basing point; generally Beatrice, Lincoln, or Fremont.

This method of establishing the interstate carload cement rates to eastern Nebraska stations is the direct cause of this complaint, at least, to that part of the petition that charges unjust discrimination against the rates established in our order in Formal Complaint No. 252 (see 7 Ann. Rep. Neb. S. R. C. 201) from Superior to these eastern Nebraska stations. This adjustment of rates causes the rates at many stations to be more favorable to cement producers in Kansas, Missouri, and Iowa than the manufacturers of cement located at Superior, illustrated as follows:

Station of	Distance.	Superior Rate.	Distance.	Sugar Creek Rate.
Auburn	152	11¢ per cwt.	135	8.5¢ per cwt.
Julian	176	13¢ " "	146	8.5¢ " "
Table Rock	122	9.5¢ " "	139	8.5¢ " "
Pawnee	115	9¢ " "	146	8.5¢ " "
Shubert	156	11.3¢ " "	127	8.5¢ " "
Syracuse	154	11¢ " "	184	10¢ " "
Berlin	165	13¢ " "	166	10¢ " "
				Des Moines Rate.
Ashland	143	10.5¢ " "	208	8.5¢ " "
Louisville	156	11.3¢ " "	176	8.5¢ " "
Nickerson	156	11.3¢ " "	224	10¢ " "
Homer	238	15.3¢ " "	303	10¢ " "
Colburn	256	16.3¢ " "	241	10¢ " "

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In most of the illustrations shown—and they are illustrative of the average—the distance from Superior is somewhat less than from the interstate point. We simply mention this in passing, as the question of distances when group rates are under consideration is but one factor in the consideration of a just and reasonable rate.

From Superior to practically all of the stations located in the eastern part of the state the haul is made in main line train service, where the density of traffic is materially above the average of the state. From a consideration of all of these facts and circumstances, the Commission is of the opinion, and we so find, that the rates established in our order in Formal Complaint No. 252 (see 7 Ann. Rep. Neb. S. R. C. 201) should be modified as to the rates on carload shipments of cement between Superior and stations in Nebraska, as hereinafter provided.

As previously stated, the rates from interstate points to stations in central and western Nebraska, in which the zone or blanket rates are not applied, are built up on the rates to basing points such as Beatrice, Lincoln, Fremont, and Omaha, plus the rates from those points to destination. A jobber of cement at these basing points can, under the system of rates obtaining, ship into such basing points and re-ship in certain instances under a more favorable basis than would apply under the distance scale from Superior to the same destinations. This condition must be recognized, and the Commission is of the opinion, and so finds, that where the combination of terminal rates from Superior to the basing points Fremont, Lincoln, and Beatrice, plus the specific rates from said points to destination, set out in General Order No. 19 (see 7 Ann. Rep. Neb. S. R. C. 325), will produce a lower rate, said combination should apply as a maximum; provided, however, that where a two-line haul is involved, the 1½-cent arbitrary shall be added.

We are of the opinion, and we so find, that 8½ cents per cwt. is a fair, just, and reasonable rate for a one-line haul for the transportation of straight carload shipments of cement, minimum weight, 30,000 pounds, from Superior to all stations (except as otherwise provided for) located east of the following lines of railroad: C. B. & Q. R. R., Wymore to Beatrice; U. P. R. R., Beatrice to Lincoln; C. & N. W. Ry., Lincoln to Blair; that 10

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cents per cwt. is a fair, just, and reasonable rate for a two-line haul from Superior to stations located in the territory just described.

We further find that a rate of 10½ cents per cwt. should apply from Superior to stations located on and east of the following lines of railroad: C. B. & Q. R. R., Nickerson to Lyons; C. St. P. M. & O. Ry., Lyons to South Sioux City.

We further find that the rates from Superior to C. B. & Q. stations located west of Laketon should be the lowest combination found by adding to the 10½-cent rate, Superior to South Sioux City, the Class "D" distance tariff rates as named in general order No. 19, or by adding to the 7-cent rate, Superior to Fremont, the Class "D" rates, Fremont to said stations.

We further find that the rates from Superior to C. St. P. M. & O. Ry. stations west of Emerson and north of Coburn should be the lowest combinations found by adding to the rate from Superior to South Sioux City or Emerson the Class "D" rates as provided in general order No. 19 (see 7 Ann. Rep. Neb. S. R. C. 325).

We further find that Class "D" rates, as provided in general order No. 19 (see 7 Ann. Rep. Neb. S. R. C. 325), should be established as a maximum for straight carload shipments of cement, minimum weight, 30,000 pounds, on the lines of the C. St. P. M. & O. Railway Company and the St. J. & G. I. Railway Company on their Nebraska intrastate traffic; that 1½ cents per cwt. added (to the Class "D" rates, as herein provided) for a more than one-line haul shall apply to shipments moving over the lines of railroad of the C. St. P. M. & O. Railway Company and the St. J. & G. I. Railway Company.

ORDER.

It is therefore ordered that the Chicago, Burlington, & Quincy Railroad Company, Chicago, St. Paul, Minneapolis, & Omaha Railway Company, the Chicago, Rock Island, & Pacific Railway Company, the St. Joseph & Grand Island Railway Company, Union Pacific Railroad Company, the Missouri Pacific Railway Company, and Chicago & North Western Railway Company be and the same are hereby notified and directed to check in and publish and file with this Commission, effective within thirty

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days from date hereof, specific schedules of rates and charges for the transportation of cement from Superior to stations on their lines in Nebraska which shall conform to the above findings.

It is further ordered that general order No. 19 (see 7 Ann. Rep. Neb. S. R. C. 325), in so far as it establishes Class "D" rates in Nebraska applicable to this order, be and the same is hereby made a part of this order.

Made and entered at Lincoln, Nebraska, this 7th day of August, A. D. 1915.

Nebraska State Railway Commission, by Henry T. Clarke, Jr., Chairman.

NEW JERSEY BOARD OF PUBLIC UTILITY COMMISSIONERS.

IN RE RARITAN RIVER RAILROAD COMPANY.

Security issues — Improvements.

A railroad company was authorized to issue $100,000 of additional capital stock for cash to be expended for necessary improvements costing $188,000, the balance of the amount to be advanced by the stockholders.

Valuation — Purpose — Standard for taxation and securities issues.

The New Jersey Commission will not countenance a double standard of valuation, one for the purpose of taxation and the other for the issuance of securities, where, by the state Constitution, property is taxable at its full value, particularly where the utility has appealed from the assessment of its property by the State Board of Assessors, and obtained a reduction in the valuation on its own testimony that the value was less than that fixed by the assessors.

Valuation — Evidence — Value for taxation.

The New Jersey Commission, in arriving at the value of the property of a railroad company for the purpose of determining whether a proposed stock dividend is justified, while not bound by a valuation by an official board for the purpose of taxation, will assume that the true value was that fixed by the tax board where no other valuation has been made either by the company or the Commission.

Valuation — Franchise costs — Security issues.

In determining the value of a franchise of a public utility for security issuance purposes an amount was allowed to cover the assumed cost of obtaining it, in the absence of the proofs of the sum actually expended.

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Valuation — Security issues — Taxation value — Hidden values.

The value of the property of a public utility fixed by a state board for the purpose of taxation, reduced on appeal on the testimony of the utility that the value of the property was less than that fixed by the taxation board, will not be assumed to be incorrect, on the theory that there were hidden values not taken into consideration in the valuation for the purpose of taxation.

Valuation — Stock dividend — Legal expenses.

The value of the property of a public utility for the purpose of determining whether a stock dividend is permissible will not be increased by the New Jersey Commission by an amount assumed to have been expended for legal expenses not otherwise included, where the proof as to such expenditures is not convincing, since the board does not look with favor upon applications for stock dividends, and will not sanction the issuance of stock for such a purpose unless satisfied by positive proof that the value justifying the increase of stock proposed has been added to the property of the utility.

Security issues — Stock dividend — Value.

The New Jersey Commission declined to authorize the issuance of securities for the purpose of a stock dividend except to the extent that the actual value of the property exceeded the present capitalization.

[July 12, 1915.]

APPLICATION for authority to issue capital stock to the amount of $210,000. Permission granted to issue stock to the amount of $100,000 for improvements and betterments, and to the extent of $100,000 as a stock dividend.

Appearances: W. D. Edwards for the company.

By the Commission: The Board is asked to authorize:

1. An issue of $100,000 of capital stock to provide for necessary improvements and betterments, the estimated cost of which will be $188,000.

2. An issue of $110,000 as a stock dividend.

As to the first request, the Board's chief inspector and auditor have verified the correctness of the items constituting the proposed improvements. The board is satisfied that these improvements will cost in the neighborhood of the figure claimed, namely $188,000, and authorizes the issue of $100,000 of stock for cash for the purpose of making such improvements. The balance of the $188,000 is to be advanced by the stockholders of the company.

The request for the authorization of the issue of $110,000 as

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a stock dividend is based to some extent upon claims which this Board cannot allow. The capitalization of the company at the present time is:

Stock	$440,000.00	
Bonds	400,000.00	
		$840,000
Proposed increase		110,000
		$950,000

In the year 1911 the State Board of Assessors, through its chief engineer, Charles Hansell, calculated the value of the property of this company taxable by that Board as $840,213. That amount, however, was reduced, upon the appeal of the railroad company, to $753,648, at which figure the property of this company, real and personal, was and is taxed by the state.

The petitioner now claims that notwithstanding its success on its appeal in obtaining a reduction in the valuation of its property from the estimate of the State Board of Assessors from $840,213 to $753,648, which reduction was obtained upon the testimony of the petitioner, the value of the property was not in excess of the latter figure, the Board of Public Utility Commissioners should ignore this valuation, and should assume the real valuation to be the original figure, namely, $840,213. The reason urged in support of this proposition is that there are two standards of valuation, one to be used as a basis for taxation purposes and the other for the issuance of securities. This Board cannot countenance any such distinction in the valuation of physical property of a utility. By the Constitution of the state all property is taxable at its full value and we cannot assume, particularly in view of the petitioner's proof on the appeal from the assessment of the State Board of Assessors, that the value of its property was more than $753,648 on December 31st, 1911.

While this Board is not bound by the valuation of the property of a utility by an official body for taxing purposes it will, in a case like the present, where no other valuation has been made either by the utility or this Board, assume that the true value of the property of such utility is that fixed by the tax Board.

We are therefore assuming that the valuation as of December 31st, 1911, is $753,648.

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We find that since that time the following amounts have been added in betterments:

(Carried)		$753,648
1912	$46,508	
1913	29,345	
1914	27,676	
		103,529
Value of land donated to the company in 1912, 1913, 1914, not included in the above		710
Value of water front on Raritan Bay opposite terminus of road 780 feet at $50 per foot and other property locally assessed (not included in the State Board of Assessors' valuation)		54,302
Additions and betterments from January 1st, 1915 to July 1st, 1915		20,050
		$932,239

It appears that the State Board of Assessors in 1914 assessed the franchise of this company at the sum of $25,000. In its report on the investigation of the reasonableness of the rates of the Public Service Gas Company, 1 N. J., P. U. C. Rep. pp. 433, 482, this Board said: "It is well known that it is the public policy of the state of New Jersey at present not to allow the capitalization of franchises for an amount in excess of actual cost involved in obtaining such franchises."

That case was appealed and the Board's determination was sustained by the court of errors and appeals. There is no proof before us that the cost of obtaining the franchise, including legal and other necessary disbursements in connection therewith, was $25,000. We think that a fairly liberal allowance, in the absence of proof of the sum actually expended for this item, is $8,000. Adding this sum to the above, we obtain a total value of this company's property of $940,239.

An affidavit of an engineer stating that there were "hidden values" of $109,000 not taken into consideration by the State Board of Assessors in its valuation of the property was produced at the hearing. This Board will not, however, for the reason stated above, assume that the valuation placed upon its physical property by this petitioner itself upon the tax appeal from the assessment of 1911 is incorrect. Nor will the Board take into consideration the item of $40,000, estimated to have been spent in necessary and legal expenses not otherwise included from 1886 to 1892. The proof as to this expenditure is not convincing. The Board is not inclined to look with favor upon applications

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for approval of stock dividends, and when it does sanction the issuance of stock for such a purpose it must be satisfied by positive proof that value justifying the increase of stock proposed has been added to the property of the utility requesting such issue.

Taking, then, the amount of the capitalization at the present time in stock and bonds as $840,000, we have property according to the calculation which we have made above worth to-day $940,239, that is to say, $100,239 more than the present capitalization. Against this excess in value we are asked to sanction a stock dividend issue of $110,000.

On the proofs before us we must decline to do so. We will approve an issue of $100,000 of stock which is the amount represented by the increase in the value of the property above the present capitalization.

Board of Public Utility Commissioners, by Ralph W. E. Donges, President; John J. Treacy, John W. Slocum, Commissioners.

Note.—Security Issues.

In Re Trenton, L. & S. R. Co. May 26, 1915, the board approved an issue of bonds to the amount of $190,000 for the purposes of acquirement of right of way and construction, upon condition that stock to the amount of $85,000 is subscribed for and paid for at par.

In Re Public Service R. Co. June 4, 1915, an application for permission to sell Weehawken extension bonds at 90 instead of 95 per cent of par value, as previously authorized, was denied.

NEW JERSEY BOARD OF PUBLIC UTILITY COMMISSIONERS.

IN RE OCEAN COUNTY GAS COMPANY.

Security issues — Purchase of stock in another company — Value.

The Commission refused to approve an issue of capital stock by one utility to the amount of $20,000 in payment for the stock of another company of the par value of $12,680, it appearing that the property of the latter company would cost only from $28,000 to $30,000 to rebuild, that it had outstanding stock to the amount of $25,000, and bonds to the amount of $25,000, the statute requiring that all stock shall be issued at par for cash or property.

[July 12, 1915.]

P.U.R.1915E.

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APPLICATION by petitioner for approval of an issue of $20,000 of stock and approval of the transfer of $12,680 of stock of the Tuckerton Gas Company; dismissed on the ground that it did not appear that a mere majority of the stock of the company whose property is valued at not more than $30,000, and is subject to a mortgage of $25,000, is worth $20,000.

Appearances: Harry Stille and H. E. Woodman for the company.

By the **Commission:** Application is made for approval of the issue of stock of Ocean County Gas Company to the par value of $20,000, in payment of stock of Tuckerton Gas Company of the par value of $12,680, approval of the transfer of which to Ocean County Gas Company is also asked in this proceeding.

In March, 1911, Union Railway Supply Company, which controls Ocean County Gas Company, entered into a contract, alleged to be for the benefit of said gas company (p. 4, record May 25th, 1915), for the purchase of 2,536 shares of stock, of the par value of $12,680, and bonds of the par value of $12,600, of Tuckerton Gas Company, in consideration of the payment of $13,600 in cash.

November 30th, 1912, the Union Railway Supply Company turned over to Ocean County Gas Company the stock of Tuckerton Gas Company to the par value of $12,680, in exchange for $20,000 of stock of Ocean County Gas Company. The Supply Company retained the bonds, although it had purchased both the stock and bonds at a price very much less than the $20,000 for which Ocean County Company issued stock in payment of Tuckerton Company stock only. Admittedly the Supply Company was acting "in the interest of the Ocean County Gas Company."

The physical property of Tuckerton Company, at the time of the stock transaction, was testified to be worth "at least $28,000 or $30,000 to rebuild." There was outstanding at that time, against this property, bonds in the amount of $25,000, and stock in the amount of $25,000. No dividend was ever earned or paid by the Tuckerton Company on its stock.

There was a disposition to claim that the $20,000 of stock of the Ocean County Gas Company was actually issued June 2d,

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1910, before the approval of this Board was required. The proofs show conclusively, however, that there was no bona fide issue of this stock until after the effort to transfer the Tuckerton Company stock on November 30th, 1912. The giving a check for $20,000, which was not used or intended to be used, except upon transfer of the Tuckerton stock, was a mere pretense and subterfuge. The approval of this Board to the issue of the stock of the Ocean Company, and of the transfer of the stock of the Tuckerton Company, is requisite.

The statute requires that all stock shall be issued at par for cash or property. In this case it does not appear that a bare majority of the stock of a company, whose property is valued at not more than $30,000, and is subject to a mortgage of $25,000, is worth $20,000. On the contrary, from the testimony submitted, it seems reasonably certain that this issue is in contravention of several statutory provisions covering the capitalization of corporations.

It is difficult to perceive how the officers and directors of this company can justify the purchase for the Ocean County Gas Company of stock and bonds to an amount upwards of $26,000 for $13,600 in cash, and then approve the issue, to the agent who negotiated the purchase, of $20,000 of stock in exchange for $12,680 of stock only of a company whose stock was of doubtful value.

The entire transaction is one that does not commend itself to a fair mind. The Ocean County Company should have immediately taken steps to secure the bonds purchased in its behalf by the Supply Company, if the transaction was to have the color of sincerity.

In the present situation this Board is required to withhold approval of the issue of stock of the Ocean County Gas Company, as well as of the transfer of stock of the Tuckerton Company.

The Board points out, however, that it is the duty of the Ocean County Gas Company to immediately straighten out this transaction, to the end that, if the control of or ownership of the property of the Tuckerton Company is to be acquired, it

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shall be upon a just and proper basis. The Board will expect this to be done.

The petition will be dismissed.

Board of Public Utility Commissioners, Ralph W. E. Donges, President; John J. Treacy, John W. Slocum, Commissioners.

OHIO PUBLIC UTILITIES COMMISSION.

IN RE ELYRIA TELEPHONE COMPANY.

[No. 466.]

Security issues — Purpose — Reimbursement of stockholders — Floating indebtedness — Sale price.

The Elyria Telephone Company was authorized to issue common stock to the par value of $61,000, $54,000 of the par value thereof to be distributed *pro rata* to the holders of the capital stock of the corporation in lieu of moneys previously expended from income for the construction, extension, and improvement of the company's plant and facilities, and the remaining $7,000 to be used for the payment and discharge of the applicant's floating indebtedness incurred in the construction, extension, and improvement of the plant and facilities, such $7,000 of stock to be sold for the highest price obtainable, but for not less than the par value thereof.

[April 28, 1915.]

APPLICATION by the Elyria Telephone Company for permission to issue common stock to reimburse its treasury for moneys expended for construction purposes and to discharge floating indebtedness incurred also for construction purposes; granted.

By the Commission: The Elyria Telephone Company, a corporation organized and existing under and by virtue of the laws of the state of Ohio, with its office and principal place of business at Elyria, Ohio, having, on the 31st day of March, 1915, filed its application praying for the consent and authority of the Commission to the issue of its common capital stock of the total par value of $61,000, $54,000, par value, of such stock to be distributed, *pro rata,* to the holders of the present outstanding capital stock of said corporation in lieu of moneys heretofore expended from income for the construction, completion, extension, and improvement of said company's plant and facilities, which moneys

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such stockholders might otherwise have received in dividends as a return upon their said investment, and the proceeds of the remaining $7,000, par value, of said capital stock to be used for the payment and discharge of applicant's floating indebtedness incurred in the construction, completion, extension, and improvement of its said plant and facilities, as fully set out in said petition and exhibits attached thereto, and the time for hearing said matter having been fixed for Friday, April 2d, 1915, at 2:30 o'clock P. M., and due notice of the time and place of said hearing having been given, and having been heard on said day and the further consideration thereof continued from day to day, the same came on this day for final consideration upon the petition, the evidence, and exhibits.

After considering the pleadings, hearing the evidence, and examining the exhibits, and being fully advised in the premises, and it appearing that $54,000, par value, of said common capital stock, is to be distributed *pro rata,* to the holders of the present outstanding capital stock of said corporation in lieu of moneys, heretofore actually expended from income for the construction, completion, extension, and improvement of applicant's plant and facilities, which moneys such stockholders might otherwise have received, in dividends, as a return upon their said investment, and that the proceeds arising from the sale of the remainder of said common capital stock are to be used for the payment and discharge of applicant's floating indebtedness, created and incurred in the construction, completion, extension, and improvement of its said plant and facilities, the Commission is satisfied that the prayer of said petition should be granted. It is, therefore,

Ordered that said the Elyria Telephone Company be, and it hereby is, authorized to issue its common capital stock of the total par value of $61,000, and that $7,000, par value, of said stock, be sold for the highest price obtainable, but for not less than the par value thereof, it being the opinion and finding of the Commission that the issue of all of said common capital stock is reasonably required for the proper purposes of said corporation. It is further

Ordered that $54,000, par value, of said common capital stock, be, by said the Elyria Telephone Company, distributed, *pro rata,*

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to the holders of its present outstanding capital stock in lieu of moneys heretofore expended from income for the construction, completion, extension, and improvement of its plant and facilities, which moneys said stockholders might otherwise have received in dividends as a return upon their said investment. It is further

Ordered that the proceeds arising from the sale of said $7,000 par value, of said common capital stock, be, by said the Elyria Telephone Company, devoted to and used for the following purpose, and no other, to wit: The payment and discharge of its floating indebtedness, as the same is more fully set out and described in the transcript of the testimony offered and introduced in evidence on the hearing of this matter, which said transcript, in so far as it sets out and describes said floating indebtedness, is hereby made a part of this order by reference. It is further

Ordered that said the Elyria Telephone Company make verified report to this Commission, as follows: Upon the issue of said common capital stock, or any part thereof, the fact of such issue, and, if sold, the terms and conditions of sale and the amounts realized therefrom, which shall be the highest price obtainable, but which shall not be less than the par value thereof; on or before the 15th day of July, 1915, for the period ending June 30th, 1915, and thereafter at quarterly intervals, the disposition and use made of said common capital stock and the proceeds of so much thereof as is sold, setting forth the name and number of shares received by each stockholder, and, in reasonable detail, the purposes for which the proceeds of the portion thereof sold have been expended, such reports to be made until all of said common capital stock is issued and disposed of and all of the proceeds of the portion thereof sold expended pursuant to the terms and conditions of this order.

The Public Utilities Commission of Ohio, Beecher W. Waltermire, Chairman; Oliver H. Hughes, Charles C. Marshall, Commissioners.

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OHIO PUBLIC UTILITIES COMMISSION.

IN RE OHIO GAS & ELECTRIC COMPANY et al.

[Nos. 506–510, Consolidated.]

Security issues — Amount — Value of consolidated property.

An application for the issuance of securities upon a proposed consolidation of several gas and electric companies was denied where it appeared that the proposed capitalization was largely in excess of the value of the properties covered thereby, that the proposed capital stock of the consolidated companies was largely in excess of the sum of the capital stock of the various corporations to be merged, that no provision had been made for the payment of such excess in cash, that it was proposed to increase largely the debt of the company, and that the service furnished the public would not be improved thereby.

[May 25, 1915.]

APPLICATION for the sale of several gas and electric companies to one company and for the issuance of securities by the latter company; denied upon the ground that the proposed issuance of securities was greatly in excess of the value of the properties proposed to be consolidated.

By the **Commission**: This matter came on to be heard upon the joint applications of the Middletown Gas & Electric Company and the Ohio Gas & Electric Company for consent and approval for the sale and purchase of the property of said the Middletown Gas & Electric Company; of the Franklin Electric Light Company and the Ohio Gas & Electric Company for consent and approval of the sale and purchase of the property of said the Franklin Electric Light Company; of the Lectonia Electric Company and the Ohio Gas & Electric Company for consent and approval for the sale and purchase of the property of said the Lectonia Electric Company, and of the New Lisbon Gas Company and the Ohio Gas & Electric Company for consent and approval of the sale and purchase of the property of said the New Lisbon Gas Company, and the application of the Ohio Gas & Electric Company for the consent and authority of the Commission for the issue of its common capital stock of the par value of $795,000, its 6 per cent, thirty-year gold bonds in the principal sum of $700,000, and its 6 per cent, ten-year

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debentures of the principal sum of $200,000, which proceedings, on motion of the parties in interest, and by consent of the Commission, were consolidated, and it appearing that the amount for which it is intended to capitalize such properties is largely in excess of the value thereof, that the proposed capital stock of the consolidated companies is largely in excess of the sum of the capital stock of the various corporations to be merged, and that no provision is made for the payment of said excess in cash, and it appearing further that it is proposed to largely increase the debt of the consolidated companies by reason of said merger, and it not appearing that the service furnished the public would be improved thereby, or that the public would be furnished adequate service for reasonable and just rates or charges therefor, it is

Ordered that these cases be, and the same hereby are, dismissed.

The Public Utilities Commission of Ohio, Beecher W. Waltermire, Chairman; Oliver H. Hughes, Charles C. Marshall, Commissioners.

Note.—The Commission has also authorized the issuance of securities in the following cases:

In Re Ohio River Electric R. & P. Co. No. 359, February 11, 1915, $150,000 common capital stock and $150,000 preferred stock, all of such preferred stock and $149,500 of the common stock to be transferred and delivered to the Ohio River Electric Railway & Power Company, in payment of the purchase price of such company, and $500 of the common capital stock to be used for other corporate purposes.

In Re McHenry, No. 430, Feb. 9, 1915, $8,972.45 6 per cent promissory notes for the purpose of acquisition of telephone property.

In Re Lima Teleph. & Teleg. Co. No. 439, Feb. 23, 1915, $32,500 common capital stock and $32,500 6 per cent cumulative preferred capital stock to be disposed of for not less than par, proceeds to be used for betterments and improvements.

In Re Columbus R. Power & Light Co. No. 357, Feb. 24, 1915, amendment to mortgage and authority to issue in addition to bonds authorized by order of October 15, 1914, first refunding extension and sinking fund 5 per cent gold bonds to refund underlying bonds as follows: For the $511,000 of the general mortgage 6 per cent gold bonds of the Columbus Light, Heat, & Power Company, of August 1, 1908, $1,100 in face value of petitioner's first refunding

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and extension sinking fund 5 per cent gold bonds for each $1,000 in face value of said bonds of the Columbus Light, Heat, & Power Company, to be exchanged or canceled; for $182,000 first mortgage 6 per cent gold bonds of the Columbus Public Service Company, of Feb. 1, 1904, $1,100 face value of petitioner's first refunding and extension sinking fund 5 per cent gold bonds for each $1,000 in face value of said bonds of the Columbus Public Service Company to be exchanged or canceled.

In Re New York C. R. Co. No. 436, Feb. 24, 1915, $70,000,000 4 per cent consolidated mortgage gold bonds, Series A, and authority to execute certain mortgages.

In Re Circleville Light & P. Co. No. 390, March 3, 1915, $75,000 first mortgage 6 per cent bonds, proceeds to be expended according to term of order of January 23, 1913.

In Re Cleveland & P. R. Co. No. 423, March 8, 1915, $1,182,550 capital stock for the extension and improvement of facilities and the maintenance of service.

In Re Cincinnati, L. & N. R. Co. No. 446, March 9, 1915, $600,000 common capital stock to be sold at not less than par, proceeds to be used for the acquisition of property.

In Re Jantha Light & Fuel Co. No. 371, March 18, 1915, $113,000 ten-year 6 per cent mortgage bonds to be sold at not less than 90 per cent of their par value, proceeds to be used for the discharge of indebtedness incurred in the purchase of material and supplies for the construction of its plant and system.

In Re Brookville & L. Lighting Co. No. 456, April 7, 1915, $5,000 common stock to be sold for not less than par, proceeds to be used for the building of transmission system.

In Re Greenville Electric Light & P. Co. No. 455, April 7, 1915, $8,000 common stock to be sold at par, proceeds used for construction purposes.

In Re Shelby Water Co. No. 460, April 8, 1915, $20,000 first mortgage ten-year 6 per cent bonds to be sold at not less than par, the proceeds, together with the sum of $889.35, to be taken from the general fund of the company, to discharge floating indebtedness.

In Re Diamond Light Co. No. 441, April 12, 1915, $30,000 capital stock for the purchase of material, and the installation and construction of plant.

In Re Ohio Service Co. No. 442, April 12, 1915, $96,500 three-year 6 per cent convertible notes to be sold for not less than 88½ per cent of their par value, the proceeds to be used to reimburse the treasury for certain overhead expenses, and for constructions, additions, extensions, and improvements to the company's property.

In Re Washington Gas & Electric Co. No. 420, April 14, 1915, $50,000 7 per cent cumulative preferred stock to be sold for not less than par, the proceeds to be used to discharge floating indebtedness

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incurred in the construction of additions, extensions, and improvements to the company's plant.

In Re Cleveland, S. W. & C. R. Co. No. 471, April 16, 1915, authority to extend time of payment of $200,000 first mortgage 6 per cent gold bonds of the Cleveland & Elyria Electric Railroad Company, dated May 1, 1895, to August 1, 1920.

In Re Sheriff Street Market & Storage Co. No. 475, April 20, 1915, $500,000 two-and-one-half-year 6 per cent notes to be sold at par, proceeds to be used for the discharge of obligations.

In Re Ohio Service Co. No. 442, April 26, 1915, $11,500 of its three-year 6 per cent convertible notes to be sold at not less than 88½ per cent of their par value, proceeds to be used to reimburse the treasury for moneys expended for betterments and improvements.

In Re Middlepoint Home Teleph. Co. No. 438, May 3, 1915, $7,747.45 additional capital stock to be distributed *pro rata* to the holders of the company's present outstanding capital stock in lieu of moneys expended from income for the construction, completion, extension, and improvement of the company's plant and facilities.

In Re Northwestern Teleph. Co. No. 452, May 4, 1915, $35,000 common stock to be sold at not less than par, proceeds to be used to discharge certain obligations, to reimburse the company for moneys expended for additions and betterments, and for the construction of additions and extensions to applicant's rural lines.

In Re Cleveland, S. W. & C. R. Co. No. 450, May 8, 1915, $119,875.27 twenty-year 5 per cent first consolidated mortgage bonds to be sold at not less than 85 per cent of their par value, proceeds to be used to reimburse the company for capital expenditures.

In Re Defiance Gas & Electric Co. No. 454, May 10, 1915, $97,600 capital stock, $175,000 first mortgage 5 per cent gold bonds, of such bonds $92,000 to be sold for not less than 80 per cent of their par value, all of such common stock and $83,000 of such bonds to be delivered in full payment of the purchase price of property approved by order No. 483; proceeds of bonds in the sum of $70,000 to be used for the payment of the purchase price of property, approved by order No. 479; proceeds of bonds in the sum of $22,000 to be used in payment for additions, extensions, and improvements; the excess of the total of $489,000 of the bonds of the Defiance Gas & Electric Company over and above the sum of $297,600, the amount of the capital stock of said company and the issue and disposition of such excess, approved.

In Re Sandusky Gas & Electric Co. No. 465, May 11, 1915, $750,000 first refunding and improvement mortgage 5 per cent gold bonds; $250,000, principal sum of such bonds to be sold at not less than 87½ per cent of their par value, the proceeds thereof to be used for the reimbursement of the company for moneys expended for

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construction of additions, extensions, and improvements; the balance of such issue to be exchanged for outstanding bonds.

In Re Athens Electric Co. No. 486, May 11, 1915, $75,000 capital stock and $75,000 promissory notes; $25,000 par value of such capital stock and all of such notes to be delivered in payment of purchase price to property, and the proceeds of the sale of $50,000 par value of common stock to be used for the construction of additions, extensions, and improvements.

In Re Federal Gas & Fuel Co. No. 463, May 12, 1915, $71,000 common stock, proceeds to be used to reimburse company for moneys expended for the construction of additions, extensions, and improvements.

In Re Springfield Gas Co. No. 464, May 17, 1915, $190,000 common stock, $65,000 par value of which to be disposed of at par, $125,000 par value of such stock to be delivered in full payment of purchase price for all of the capital stock of the Springfield Gas, Coke & Pipe Line Company, the proceeds from the sale of $65,000 to be used for the reimbursement of the company for moneys expended for the construction of additions, extensions, and improvements.

In Re Columbus R. Power & Light Co. No. 451, May 21, 1915, $1,739,000 first refunding and extension sinking fund mortgage 5 per cent bonds to be sold at not less than 80 per cent of their par value, the proceeds of the issue of $1,189,000 to be used for the payment for the additions, extensions, and improvements to properties within the period of November 1, 1913, to March 31, 1915; the proceeds of the issue of $300,000 to be used as additional working capital; the proceeds of the issue of $250,000 to be applied to the payment for additions, extensions, and improvements according to an estimate filed May 11, 1915.

In Re Dayton Power & Light Co. No. 504, May 21, 1915, $172,600 6 per cent cumulative preferred capital stock, to be sold at not less than 87½ per cent of the par value, the proceeds to be used for equipment.

In Re Dayton Power & Light Co. No. 480, May 24, 1915, $300,000 6 per cent cumulative preferred stock to be sold at not less than 87½ per cent of its par value, the proceeds to be used for additions and betterments.

In Re Dayton Power & Light Co. No. 477, May 24, 1915, $183,425, 6 per cent cumulative preferred stock to be exchanged for property of the Miami Light, Heat, & Power Company.

In Re Berea Pipe Line Co. No. 513, May 25, 1915, $170,000 capital stock to be sold at par, proceeds to be used for construction of additions and extensions.

In Re Ohio Gaslight & Coke Co. No. 458, May 28, 1915, $17,000 capital stock, $30,000 first mortgage 6 per cent thirty-year bonds to be sold at not less than par, proceeds to be used for the construction

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of a line from Wauseon to Delta, the installation of a distributing system in Delta, and the construction of additions, extensions, and betterments to petitioner's plant and facilities at Napoleon, Wauseon, Bryan, and Montpelier.

In Re Ann Arbor R. Co. No. 519, June 11, 1915, $17,500 6 per cent promissory notes, the proceeds to be used for balance due purchase price of refrigerator cars.

In Re Chesapeake & O. R. Co. No. 524, June 14, 1915, $50,000 capital stock and $74,000 first mortgage 5 per cent twenty-year gold bonds, the proceeds to be used for the discharge of indebtedness.

In Re Lake Erie & Y. R. Co. No. 418, June 14, 1915, extension of time of two years and six months from June 7, 1915, within which to construct its railroad and fully to issue and dispose of its stock and bonds as provided in original orders of January 17, 1913, and October 11, 1913.

In Re St. Joseph Valley R. Co. No. 517, June 15, 1915, $10,000 capital stock to be sold at not less than par, proceeds to be applied to the payment of indebtedness incurred in the construction of a railway line.

In Re Ohio State Power Co. No. 532, June 15, 1915, $700,000 first mortgage bonds and $100,000 preferred stock, proceeds to be used to discharge outstanding obligations and for the purpose of construction and equipment.

In Re West Jefferson Home Teleph. Co. No. 499, June 16, 1915, $21,457.36 capital stock to be issued for the purchase price of telephone property.

In Re Bradford & G. Electric Light & P. Co. No. 520, June 18, 1915, $3,000 5 per cent first mortgage bonds and $5,000 four-year 6 per cent notes, the bonds to be disposed of at not less than 90 per cent of their par value, and the notes at not less than par, the proceeds to be used to reimburse the company for moneys expended for the construction of a transmission line.

In Re Massillon Electric & Gas Co. No. 512, June 22, 1915, $118,000 first mortgage 5 per cent sinking fund gold bonds and $125,000 6 per cent cumulative preferred capital stock, the capital stock to be sold at not less than 80 per cent of its par value and the bonds at not less than 87 per cent of their par value, the proceeds to be used for reimbursing the company for moneys expended for the construction of additions and extensions and improvements to its facilities.

In Re Delphos Gas Co. No. 489, June 24, 1915, $40,000 capital stock, $53,000 first mortgage 6 per cent gold bonds, the stock to be sold at par and the bonds at not less than 85 per cent of their par value, proceeds to be used for the payment of the purchase price of the property.

In Re Cleveland, P. & E. R. Co. No. 522, June 24, 1915, $20,000 forty-year 5 per cent refunding and extension mortgage gold bonds

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to be sold at not less than 80 per cent of their par value, proceeds to be used for reimbursing the company for moneys expended for additions, extensions, improvements, and betterments to its facilities.

In Re Cleveland, P. & A. R. Co. No. 523, June 24, 1915, $10,000 first mortgage 5 per cent gold bonds to be sold at not less than 80 per cent of their par value, proceeds to be used to reimburse the company for moneys expended for additions, extensions, improvements, and betterments to its facilities.

In Re Delaware Water Co. No. 493, June 26, 1915, $3,700 6 per cent preferred capital stock to be sold at not less than 90 per cent of its par value, the proceeds to be used to reimburse the company for moneys expended for additions, extensions, improvements, and betterments to its facilities.

In Re Conneaut Teleph. Co. No. 531, June 30, 1915, $58,500 capital stock to be sold at not less than par, proceeds to be applied to the payment of the company's bills payable to the extent of $4,303.10, the balance to be used for the purchase price of property and the construction of certain additions and improvements.

In Re East Liverpool Traction & Light Co. No. 546, July 1, 1915, $82,560 car trust certificates.

In Re Tiffin Waterworks No. 553, July 9, 1915, $16,000 5 per cent mortgage bonds and $43,500 6 per cent preferred stock to be sold at not less than 90 per cent of their par value, the proceeds to be used to reimburse the company for moneys expended for construction and betterments.

In Re Noble Fuel Supply Co. No. 454, July 9, 1915, $10,000 capital stock to be sold for not less than par value, proceeds to be used in payment of the purchase price for property.

In Re Canton Electric Co. No. 545, July 15, 1915, $106,000 first and refunding mortgage 5 per cent sinking fund gold bonds to be sold at not less than 85 per cent of their par value, the proceeds to be used for reimbursing the company for moneys expended for additions and betterments.

In Re Steubenville R. R. Co. No. 567, July 15, 1915, $9,000 capital stock, to be issued in payment of purchase price for property.

In Re Pittsburgh, Y. & A. R. Co. No. 533, July 20, 1915, $364,000 first general mortgage 4 per cent bonds of Series A, such bonds to be transferred to the Pennsylvania Company, the lessee of applicant's property, in reimbursement for moneys expended by such lessee for the construction of additions, extensions, and improvements to applicant's property.

In Re Ohio Gaslight & Coke Co. No. 541, July 20, 1915, $12,000 capital stock and $12,000 first mortgage 6 per cent thirty-year bonds to be sold at not less than par, the proceeds to be used in payment for the purchase price of property, and for additions, extensions, improvements, and betterments.

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In Re Fairfield Twp. Teleph. Co. No. 558, July 20, 1915, $2,500 capital stock, $1,350 of which to be sold at not less than par, such stock and proceeds to be used for the purchase price of property and for the construction of additions, extensions, improvements, and betterments.

In Re Mutual Electric Co. No. 503, July 21, 1915, $65,000 capital stock and $45,000 three-year 7 per cent promissory notes, $40,000 of such capital stock to be sold at not less than par, such capital stock or the proceeds arising therefrom and said notes to be used in payment of the purchase price for property and for the construction of additions, extensions, improvements, and betterments.

In Re Northern Ohio Traction & Light Co. No. 555, July 27, 1915, $500,000 6 per cent notes or bonds to be sold at not less than 96 per cent of their par value, proceeds to be used to reimburse the treasury for moneys expended for additions, extensions, and improvements to the company's facilities.

In Re Kenohio Electric Co. No. 561, July 27, 1915, $1,000 capital stock to be sold at par, proceeds to be used in payment of obligations incurred in the completion of the corporate organization, the expense of incorporation, and to furnish a working capital; for the acquisition of property and the construction of additions, extensions, improvements, and betterments.

In Re The Marion Water Co. No. 572, August 9, 1915, $12,500 preferred stock to be sold at par and the proceeds to be applied to the payment of the cost of making certain extensions.

OKLAHOMA CORPORATION COMMISSION.

J. L. NEWLAND

v.

ST. LOUIS & SAN FRANCISCO R. CO.

[Cause No. 2309; Citation No. 567; Order No. 934.]

Fines and penalties — Violation of order — Operation of trains — Rendering service at loss.

The Oklahoma Commission imposed a fine of $500 with costs upon a railroad company which had violated an order of the Commission to operate certain passenger trains necessary for the reasonable convenience of the public, upon the ground that the fact that such trains might be operated at a loss was not sufficient to render the order unreasonable.

[August 6, 1915.]

COMPLAINT alleging that the St. Louis & San Francisco Rail-

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road Company had violated an order of the Commission requiring it to operate certain railroad trains. Upon the finding of the truth of the allegations of the complaint, the Commission imposed a fine of $500 upon the railroad company.

By the Commission: Information in this case was filed by J. L. Newland of Frederick, Oklahoma, alleging that the defendant, St. Louis & San Francisco Railroad Company, James W. Lusk, W. C. Nixon, and W. B. Biddle, its receivers, violated order No. 175 by discontinuing the operation of trains Nos. 674 and 675 between Clinton, Oklahoma, and Davidson, Oklahoma.

Order No. 175, directed against the defendant herein, was issued March 1, 1909, and that portion of which was modified and affirmed by the supreme court is found in 1909–10 Report of the Corporation Commission, page 289, and in 25 Okla. 673, and reads as follows:

"The judgment of the Corporation Commission is accordingly affirmed wherein it requires a passenger train to be installed to be operated daily each way from Enid to Davidson, being in addition to the train already operating from Enid to Vernon, Texas, and intervening points, which will, including the trains from Enid to Vernon, constitute two trains daily each way between Davidson and Enid."

The defendant, by its answer filed herein, denies that it has violated order No. 175, and alleges that trains No. 674 and No. 675 were operated at a loss, and that the enforcement of order No. 175 results in depriving the defendant of its property without just compensation.

It is shown by the evidence that passenger trains Nos. 674 and 675 were discontinued by defendants on the 11th day of April, 1915; that by reason of such discontinuance the public was greatly inconvenienced. Frederick, Oklahoma, has only one northbound train which departs at 5:33 A. M. and one southbound train arriving at Frederick at 8:55 P. M. Frederick is the county seat of Tillman county, and it is impossible for passengers from points north of Frederick to reach the county seat by rail without spending two nights and one day in Frederick. The towns of Davidson, Manitou, Hobart, Roosevelt, Snyder, Cordell, and Clinton are also inconvenienced by the discontinuance of these

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trains, which also caused delay in express shipments and mail service. Express shipments are delayed one day. This results in much damage to farmers shipping produce and poultry.

It was shown by the evidence of the defendants that from September, 1914, to March, 1915, the gross revenue of these trains did not exceed 69.1 cents per train mile; that the actual cost per train mile for the operation of these trains in March, 1915, exclusive of proportionate share of maintenance of cars, engine service, despatching, yard service, casualties, superintendence, and overhead expenses, amounted to 40.7 cents per train mile; that when all the expenses were considered the trains were operated at a loss.

Defendants' witnesses claim that the cost of operating passenger trains in Oklahoma exceeds 90 cents per train mile. This may be true on an average, dividing all of the expenses in proportion to the trains operated over the system. However, all the expenses, other than the expense of operating a particular train, such as train men, labor, water, fuel, maintaining the equipment, exist and continue in substantially the same degree as though this particular train were not operated.

Defendants insist that by attaching a passenger coach to a freight train that reasonable service may be afforded. This has not been done and no application made to the Commission to discontinue trains Nos. 674 and 675, and in lieu thereof attach a passenger coach to a freight train. Performing passenger service with a freight train is inconvenient to the public and very unsatisfactory. The freight train is seldom on time and the public would sustain greater loss in delays in waiting for the train than the company claims its loss is by operating a regular passenger train. Because of the character of the equipment and the danger of derailments and sudden application of brakes, most railroads require passengers to execute a release exonerating the company from liability for personal injury to the passenger.

This road is operated through some of the largest towns in western Oklahoma. According to the last census, 1910, all of which have increased in population since that time, Clinton has 2,781; Hobart, 3,845; Frederick, 3,027; Cordell, 1,252; Snyder, 1,142; Davidson, 361. It is also surrounded on all sides by an excellent agricultural country. More than a year ago this par-

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ticular section of country was visited by a severe drouth which temporarily decreased the gross revenue of the defendant. These temporary decreases in gross revenue due to a bad crop are not sufficient to interrupt a regular passenger service which had been in operation and the public accustomed to using the same.

The defendants discontinued these trains without making application to the Commission for modification of the order, relying upon that provision of the law which provides that in a defense to a contempt proceeding the reasonableness of the order may be impeached. The reasonableness of this order has already been passed upon by the supreme court, yet in disregard of an order affirmed by the supreme court, the defendants arbitrarily discontinued train service. Similar cases have been before the Supreme Court of the United States and affirmed. The facts in this case are not different from those in the case of Missouri P. R. Co. v. Kansas, 216 U. S. 262, 54 L. ed. 472, 30 Sup. Ct. Rep. 330, as follows: "When the controversy here presented is properly analyzed the first and pivotal question arising is whether the order complained of did anything more than command the railroad company to perform a service which it was incumbent upon it to perform as the necessary result of the possession and enjoyment of its charter powers, and which it could not refuse to perform as long as the charter powers remained and the obligation which arose from their enjoyment continued to exist. The difference between the exertion of the legislative power to establish rates in such manner as to confiscate the property of the corporation by fixing them below a proper remunerative standard and an order compelling a corporation to render a service which it was essentially its duty to perform was pointed out in Atlantic Coast Line R. Co. v. North Carolina Corp. Commission, 206 U. S. 1, 51 L. ed. 933, 27 Sup. Ct. Rep. 585, 11 Ann. Cas. 398. In that case the order to operate a train for the purpose of making a local connection necessary for the public convenience was upheld, despite the fact that it was conceded that the return from the operation of such train would not be remunerative. Speaking of the distinction between the two, it was said (p. 26): 'This is so (the distinction) because, as the primal duty of a carrier is to furnish adequate facilities to the public, that duty may well be

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compelled, although by doing so, as an incident, some pecuniary loss from rendering such service may result.' "

In the case of Atchison, T. & S. F. R. Co. v. Miller, 28 Okla. 109, 114 Pac. 1104, the court sustained an order of the Corporation Commission requiring a railway company to operate passenger train each way daily, although it was shown that the train would be operated at a loss on Sunday.

The Commission finds from the evidence that order No. 175 was violated. It further finds from the evidence that the order was not unreasonable at the time the same was violated. It is therefore ordered and adjudged that the defendant, the St. Louis & San Francisco Railroad Company, Jas. W. Lusk, W. C. Nixon, and W. B. Biddle, its receivers, be penalized and fined in the sum of $500 and the cost of this prosecution. That said fine and costs shall be collected in the same manner as other preferred claims are collected through the receivers.

Corporation Commission, J. E. Love, Chairman; W. D. Humphrey, Geo. A. Henshaw, Commissioners.

WEST VIRGINIA SUPREME COURT OF APPEALS.

EX PARTE DICKEY.

(— W. Va. —, 85 S. E. 781.)

Highways — Quality of use by common carriers.

All rights of common carriage on highways, such as those conducted by means of drays, omnibuses, hackney coaches, and taxicabs, are legislative grants or concessions, much lower in legal quality and dignity than the rights of ordinary use to which highways are incidentally subjected by citizens in travel and the prosecution of their business.

Municipalities — Use of streets — Implied grant of right of common carriers.

Legislative recognition of such right of common carriage as one common to all citizens by grant of authority to municipal corporations to license and tax persons engaged in the exercise thereof, in the manner in which they are authorized to license and tax ordinary vocations, is an implied grant of such common right.

Common carriers — Use of highways — Convenience to public.

But the legislature may so limit, qualify, and regulate such right as to make the exercise thereof subserve the interest and con-

Headnotes by the COURT.

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venience of the public, as in the case of ferries, street railways, telegraphs, and telephones.

Constitutional law — Use of streets and highways — Delegation of powers of regulation.

To that end, it may prescribe the number, character, routes, rates, and hours of service of common carrying vehicles on the highways, or delegate such power of regulation to municipal corporations.

Municipalities — Regulation of use of streets — What amounts to delegation of power.

A charter provision empowering a municipal corporation to grant, refuse, or revoke licenses to the owners of vehicles kept for hire therein, and to subject them to such regulations as the interest and convenience of the inhabitants thereof, in the opinion of the municipal authorities, may require, delegates to the corporation full legislative power over such vehicles.

Municipalities — Powers — Regulation of jitneys.

Under such authority, the corporation has power to prescribe the routes and hours of service of motor vehicles commonly called "jitney busses," carrying passengers along the streets and taking in and discharging them in a manner similar to that in which they are received and discharged by street cars, and to require from them indemnity against injury to persons and property occasioned by the operation thereof.

Municipalities — Powers — Classification of vehicles.

A municipal corporation having full legislative power to limit and regulate the use of vehicles kept for hire may classify them, for purposes of regulation; and an ordinance dealing fully with one class of such vehicles, as determined by the nature of their business and the prices they charge, is not discriminative because of its lack of provision for the regulation of other distinct classes of vehicles kept for hire.

Municipalities — Regulation of vehicles — Arbitrary classification.

Specification of the price charged by a common carrier vehicle, as an element of its description in an ordinance prescribing its class, does not make the classification arbitrary or discriminative, unless it appears that there are other vehicles of the same class, as determined by the nature of their business, that charge prices other than those specified.

[June 22, 1915.]

WRIT of habeas corpus charging illegality of ordinance for violation of which relator is held in restraint of his liberty; writ refused.

Appearances: Daugherty & Riggs for petitioner; F. M. Livezey for respondent.

Poffenbarger, J., delivered the opinion of the court:

Charging illegality of an ordinance for violation of which he

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is held in restraint of his liberty, the relator seeks his discharge on a writ of habeas corpus.

The ordinance in question is one made by the commissioners of the city of Huntington, for the regulation, licensing, and taxing of certain vehicles commonly known as "jitney busses," designated in the ordinance as motor busses, and therein defined as vehicles "propelled by either gasolene or electricity, operated over any of the streets in the city of Huntington, for the purpose of carrying passengers for hire, at a rate of fare of 15 cents or less for each passenger, and which receives and discharges passengers along the route traversed by such vehicles." It makes it unlawful for any person, firm, or corporation to use or occupy any public street in the city of Huntington with a motor bus, without a permit or license therefor and compliance with the terms of the ordinance. It imposes an annual license tax of $50 for such of them as have capacities of four passengers or less and $70 for such as have capacities of five passengers or more, but allows an apportionment of the tax when the license is taken out for the unexpired portion of a year. It also requires the licensee to enter into a bond in the penalty of $5,000, with a condition for compliance with the provisions of the ordinance and payment of any and all lawful claims for damages for injury to persons or property sustained by passengers in them or by other persons that may be killed or injured or suffer damage to property in the city of Huntington in the operation thereof. A condition precedent to the issuance of the license is the filing of an application showing: (1) The name, residence, and business address of the person, firm, or corporation owning and operating the bus; (2) the type of motor bus to be used; (3) the number of such vehicles to be operated by the applicant and the state license number of each; (4) the seating and weight capacity of each; and (5) the terminals and the routes over which it is to be operated, and the hours of its operation. The Commission reserves to itself the right to refuse or grant such permit or license as applied for, or to change the route or the hours set forth in the application and then grant the license upon such changed route or hours or both.

As regards legislative power or control, the business or interest regulated by the ordinance is clearly distinguishable from vocations, the pursuit of which does not involve the use of public

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property. The right of a citizen to pursue any of the ordinary vocations, on his own property and with his own means, can neither be denied nor unduly abridged by the legislature, for the preservation of such right is the principal purpose of the Constitution itself. In such cases, the limit of legislative power is regulation, and that power must be cautiously and sparingly exercised, unless the business is of such character as places it within the category of social and economic evils, such as gaming, the liquor traffic, and numerous others. To this list may be added such useful occupations as may, under certain circumstances, becomes public or private nuisances, because offensive or dangerous to health. All of these fall within the broad power of prohibition or suppression, some wholly and absolutely and others conditionally. Such pursuits as agriculture, merchandising, manufacturing, and industrial trades cannot be dealt with at will by the legislature. As to them, the power of regulation is comparatively slight, when they are conducted and carried on upon private property and with private means. But when a citizen claims a private right in public property, such as a street or park, a different situation is presented. Such properties are devoted primarily to general and public, not special or private, uses, and they fall within almost plenary legislative power and control. In them, all citizens have the usual and ordinary rights in an equal degree and to an equal extent. In the regulation thereof, the legislature cannot discriminate. But, as regards unusual and extraordinary rights respecting public properties, its power of control and regulation is much more extensive. Such rights are in the nature of concessions by the public, wherefore the legislature may give or withhold them at its pleasure. It may give them for some purposes and withhold them for others, and, in the case of those given, it may, upon considerations of character, quality, and circumstances, discriminate, permitting some things of a general class or nature to be done and refusing to permit others of the same general class to be done, or extending the privilege to some persons and denying it to others because of differences of character or capacity.

The right of a citizen to travel upon the highway and transport his property thereon, in the ordinary course of life and business, differs radically and obviously from that of one who

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makes the highway his place of business and uses it for private gain, in the running of a stage coach or omnibus. The former is the usual and ordinary right of a citizen,—a common right,—a right common to all; while the latter is special, unusual, and extraordinary. As to the former, the extent of legislative power is that of regulation; but, as to the latter, its power is broader, the right may be wholly denied, or it may be permitted to some and denied to others, because of its extraordinary nature. This distinction, elementary and fundamental in character, is recognized by all the authorities:

"A distinction must be made between the general use, which all the public are permitted to make of the streets for ordinary purposes, and the special and peculiar use, which is made by classes of persons in the pursuit of their occupation or business, such as hackmen, drivers of express wagons, omnibuses, etc." Tiedeman, Mun. Corp. § 299.

"The rule must be considered settled that no person can acquire a right to make a special or exceptional use of a public highway, not common to all citizens of the state, except by grant from the sovereign power." Jersey City Gas Co. v. Dwight, 29 N. J. Eq. 242; McQuillen, Mun. Corp. 1620.

An ordinance of the city of Boston provided that no person should make an address in or upon or near the public grounds of the city, without a permit from the mayor. Having been denied such a permit, one Davis did make a public address on public grounds known as "Boston Commons." Under this ordinance, he was convicted of an offense, and the supreme judicial court of Massachusetts affirmed the judgment, holding the legislature had conferred upon the city of Boston the power to pass and enforce such an ordinance. On an appeal to the Supreme Court of the United States, the judgment of the state court was affirmed, and Mr. Justice White, delivering the opinion of the court, said: "The 14th Amendment to the Constitution of the United States does not destroy the power of the states to enact police regulations as to the subjects within their control, . . . and does not have the effect of creating a particular and personal right in the citizen to use public property in defiance of the Constitution and laws of the state." Davis v. Massachusetts, 167 U. S. 43, 47, 42 L. ed. 71, 72, 17 Sup. Ct. Rep. 731, 733.

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Plainly, therefore, the result of this inquiry depends not upon the power of the legislature over the subject-matter of relator's alleged right, but upon the action of the legislature respecting the same. That he has no natural or indefeasible right to maintain upon a public highway a vehicle for the carriage of passengers for hire is unquestionable. Though, in point of theory, special rights in highways are vested in individuals only by legislative grant, it is a matter of common knowledge and judicial cognizance that, without express legislative permission to do so, citizens use them in special ways consistent with their nature. They naturally enter upon them and carry on business, not inconsistent with their use for ordinary purposes, or rather not obstructive of such use, until prohibited by a statute or an ordinance. In the early history of this country, before the establishment of railroads, the public roads were used by stage lines. Indeed, passenger transportation through the country, other than that by navigable waters, was carried on by means of stage lines, and the legislatures exercised little, if any, authority over them, beyond the establishment of such regulations as were applicable to other vehicles on the public roads. How their rights were acquired, and just what regulations were imposed, would be matter of historic interest, but its importance or relevancy upon this inquiry would hardly justify the examination of the early statutes, requisite to the ascertainment of the creation, recognition, or regulation of the right. At this late day, they are not readily to be found in the text-books. City cabs and omnibuses are of the same general nature and are permitted to use the streets of all cities and villages throughout the country, without any special grant from the legislature. Proceeding upon the assumption of the right of owners of vehicles to use highways for the purposes of common carriage, the legislatures deal with them in much the same manner as that in which they deal with ordinary vocations, confining themselves to measures of regulation. While it does not amount to an express grant of right to make use of the highways, it is a recognition thereof which fairly amounts to an implied grant. In the general statutes of the state, there is neither a grant nor a prohibition of the use of the public highways for the purposes of common carriage, such as stage lines or omnibuses, and in the charters granted by the legislature to cities,

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towns, and villages, as well as in chapter 47 of the Code, under which corporations having a population of less than 2,000 may be organized, there is neither an express grant nor a prohibition of such right; but by the special charters, as well as by chapter 47, municipal corporations are authorized to license vehicles kept for hire, just as they license hotels, peddlers, brokers, billiard and pool tables, slot machines, and numerous other persons and enterprises. Section 28 of chapter 47 of the Code, serial § 2409, among other things authorizes the councils of cities, towns, and villages "to impose a license tax on persons or companies keeping for hire carriages, hacks, buggies, or wagons, or for carrying passengers for pay in any such vehicle, in such city, town or village." A similar provision is found in most of the special charters granted by the legislature. This implies the right and, if necessary, grants it. What is necessarily implied in a statute, or must be included in it to make the terms actually used have effect, according to their nature and ordinary meaning, is as much a part of it as if it had been declared in express terms. State v. Harden, 62 W. Va. 313, 58 S. E. 715, 60 S. E. 394; Hasson v. Chester, 67 W. Va. 278, 67 S. E. 731.

A similar method of dealing with them in other states is disclosed by the statutes and decisions thereof. Everywhere such enterprises are regarded and treated as of rightful existence and subjected to regulation and control in the same manner as ordinary vocations not in any sense involving the use of public property. Generally the authority and power of regulation in cities and towns is treated as having been delegated to them by the legislatures. Frommer v. Richmond, 31 Gratt. 646, 31 Am. Rep. 746. In Com. v. Stodder, 2 Cush. 562, 48 Am. Dec. 679, the authority of the mayor and aldermen of the city of Boston to require licenses from citizens of other towns and cities for the maintenance of hackney coaches and omnibuses, for the carrying of passengers from neighboring towns into the city and out of the city to such neighboring towns, without legislative authority therefor, was denied, as was also their authority to impose any tax upon such carriers.

However it may be regarded as having been acquired, the right claimed by the relator, in the absence of legislative prohibition, seems to be considered in all jurisdictions as one common to all

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citizens who care to exercise it. Public highways are treated as navigable waters, in the sense that any citizen desiring to use them as a common carrier thereon may acquire the necessary equipment, select the portion of the highway or river he desires to use, and enter upon the business in common with all other persons engaged in it. It is equally clear, however, that the legislature has full and complete power for drastic regulation of such business and to take away the right to pursue it upon such highways as it may see fit to devote exclusively to ordinary public uses. In O'Connor v. Pittsburgh, 18 Pa. 187, Gibson, Ch. J., said: "To the commonwealth here, as to the King in England, belongs the franchise of every highway as a trustee for the public; and streets regulated and repaired by the authority of a municipal corporation are as much highways as are rivers, railroads, canals, or public roads laid out by the authority of the quarter sessions. In England a public road is called the King's highway; and, though it is not usually called the commonwealth's highway here, it is so in contemplation of law, for it exists only by force of the commonwealth's authority. Every railroad, canal, turnpike, or bridge company has its franchise by grant from the state, and consequently with its original qualities and immunities adhering to it. Every highway, toll or free, is licensed . . . and regulated by the immediate or delegated action of the sovereign power; and in every commonwealth the people in the aggregate constitute the sovereign."

To accomplish the exclusion of automobiles from the use of certain streets or public ways in cities and towns, the legislature of Massachusetts deemed it necessary to pass a statute authorizing the aldermen of the cities and selectmen of the towns to make such regulations, subject to a power of review in the State Highway Commission. The constitutionality of this statute was questioned in Com. v. Kingsbury, 199 Mass. 542, 127 Am. St. Rep. 513, 85 N. E. 848, but the court upheld it.

It would be inconsistent with this theory to say the legislature, in committing to county courts, villages, towns, and cities the controls of such portions of the highways as happen to be within their limits, intended to make them absolute owners and proprietors of the same, with power to do as they please with them. Such municipalities own such portions of the highways for such

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public uses and purposes as the legislature, by express declaration or implication, recognizes as lawful. They hold them as agencies of the state for such public uses, and therefore they can limit, restrict, or regulate such uses in such manner and to such extent only as the legislature has authorized. For the promotion of local comfort, convenience, and prosperity, the legislature has empowered them to establish, maintain, and improve highways and given them authority to raise money by taxation for such purposes; and, at the same time, it has compelled them to assume, not only the burden of construction and maintenance, but also liability for injuries occasioned by defects. Nevertheless, it would be inconsistent with sovereign legislative power and control over the highways to infer from this agency legislative purpose to confer upon local municipalities power to deny any right of the public in them. Therefore such authority does not exist, unless it has been expressly or impliedly conferred.

In the light of these general principles and conclusions, the provisions of the charter of the city of Huntington, applicable to the subject, must be read and interpreted. The most comprehensive one of these, and the only one it is deemed necessary to consider, is found in § 68 of chapter 3 of the Acts of 1909. After having authorized the commissioners to require a city license for anything for which a state license is required, and to impose a tax thereon for the use in the city, it proceeds as follows: "And the Board of Commissioners shall have the power to grant, refuse, or revoke any such license of owners or keepers of hotels, carts, or wagons, drays, and every other description of wheeled carriages kept or used for hire in said city, and to levy and collect tax thereon and to subject the same to such regulations as the interest and convenience of the inhabitants of said city, in the opinion of the Board of Commissioners, may require."

Power in the city to subject all kinds of wheeled carriages kept for hire to such regulations as the interest and convenience of the inhabitants thereof may require, in the opinion of the Board of Commissioners, and to refuse them license, is as broad as the power of the legislature itself over them. They, with the owners and keepers of hotels, are segregated from all other subjects of license and taxation, by the terms of the statute, and put into a separate and distinct class over which the city is ac-

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corded full and complete power. In all other cases, it is authorized merely to require licenses and impose taxes, and nothing is said about regulation. In these, there is an explicit grant of power to grant, refuse, or revoke licenses and to regulate in a manner and to an extent left in the discretion of the Commissioners. It is wholly unlike the power over the same subjects, granted by § 28 of chapter 47 of the Code, and necessarily evinces legislative intent greatly to enlarge that power. How far? The terms are unlimited. Nothing in the nature of the subject-matter affords a basis or ground for a presumption against intent to allow the words effect accordant with their full literal import. The presumption of intent to allow such vehicles the rights previously enjoyed by them and recognized in most of the special charters and the general law is completely overthrown and broken down by the use of terms in this charter, wholly inconsistent with it. It is difficult to conceive of more comprehensive terms. Of course, the provisions could have been so framed as expressly and in terms to have authorized exclusion from certain streets, the observance of certain hours, and the like, but it is unusual for legislative acts granting full discretionary power to descend into such details. In every such attempt at enumeration, there is always danger of omission of things intended to be included. The standards of regulation here are the interest and convenience of the inhabitants of the city as seen and understood by the Commissioners; not any pre-existing law relating to the subject-matter, except, perhaps, the limitations inhibiting discrimination and unreasonableness, to which the legislature itself is subject.

"While the mere power to license, or to license and regulate, does not confer the power to grant an exclusive license, yet authority delegated to a municipality to grant or refuse a license empowers it to grant such exclusive license." 25 Cyc. 603; Burlington & H. County Ferry Co. v. Davis, 48 Iowa, 133, 30 Am. Rep. 390; Rosa v. New Orleans, 1 La. 126; Carroll v. Campbell, 25 Mo. App. 630.

"The power to grant an exclusive license must be found, we think, if at all, in other words of the charter. Upon looking into it, we find that it conferred the 'power to grant and refuse license.' Herein, we think, was conferred the power to grant an exclusive license. The power to license necessarily includes the power to

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prohibit unlicensed persons from doing the acts authorized by the license. The power to refuse license necessarily gives the power to limit the issuance of licenses." Burlington & H. County Ferry Co. v. Davis, cited.

Under the broad power given by this charter, to grant, refuse, and revoke licenses to hotel keepers and operators of vehicles kept for hire, and to regulate them for the interest and convenience of the inhabitants of the city, the commissioners may do anything respecting these subjects that the legislature itself could do, and, as we have shown, that power is almost unlimited.

For the grant of such power, reason is found in the nature of these subjects. Whether a hotel or tavern should be permitted in a given place depends upon its character and how it is conducted, for the privilege is peculiarly liable to abuse, and the comfort of the traveling public demands the maintenance of suitable accommodations, just as in the case of a ferry or other provision for public necessities and conveniences. Conveyances on the streets, for the use of the general public, are of the same character, and, in addition to this, cabs, hackney coaches, omnibuses, taxicabs, and hacks, when unnecessarily numerous, interfere with ordinary traffic and travel and obstruct them. Prescription of routes or places of business for them is a fair, reasonable, and efficacious means of preventing such results. Nor is it unreasonable to require them to maintain the service during prescribed hours. They are engaged in a public service which the legislature may always regulate. Nor is there any constitutional inhibition of legislative requirement of indemnity from persons so engaged, against injury to persons or property. State ex rel. Case v. Howell, — Wash. —, 147 Pac. 1159; Portland v. Western U. Teleg. Co. — Or. —, L.R.A. 1915D, 260, 146 Pac. 148; Springfield Water Co. v. Darby, 199 Pa. 400, 49 Atl. 275.

While this ordinance is said to be discriminatory in favor of omnibuses, taxicabs, hacks, and other vehicles kept for hire, not of the class described in the ordinance, and against that class, there is no suggestion, in the petition for the writ or in the argument, of the existence of "jitney busses" in the city not included by the description. The price charged is made an element of the description, and, if there were "jitney busses" charging more than 15 cents, this might operate as a classification with reference

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to the price charged for service and render the ordinance unreasonable. In the opinion of a majority of the members of this court, it would. But there is no pretense of the existence of such vehicles, and, if there are such, we have no judicial knowledge of them. The popular name of the vehicle signifies the contrary. A "jitney bus," charging more than 5 cents as the ordinary fare, would be a contradiction in terms, and the ordinance may be amenable to criticism for misdescription, on that ground, but clearly not void for that reason.

The ordinance is not obnoxious to the provisions of chapter 43B of the Code of 1913, regulating motor vehicles generally, nor within the scope thereof, except in so far as it imposes the duty of state regulation and a state tax and prescribes the law of the road. These vehicles are more than mere automobiles incidentally used by the citizens for purposes of business and pleasure. They include an additional element, common carriage, bringing them within the municipal power of control, just as horse-drawn carriages and other vehicles fall within it, by reason of the peculiar uses made of them.

Our conclusion is that the ordinance is free from constitutional and other defects, and therefore valid. It may be burdensome and, in the opinion of many people, oppressive and unwise, just as many other valid laws are regarded. But the question submitted here is one of municipal power, not policy. With the latter the courts have nothing to do, nor can they overthrow laws, ordinances, or regulations made by competent authority, merely because, in the opinion of the judges, they might or should have been made more liberal or less rigorous. Spedden v. Board of Education, — W. Va. —, 52 L.R.A.(N.S.) 163, 81 S. E. 724; Charleston v. Littlepage, 73 W. Va. 156, 51 L.R.A.(N.S.) 353, 80 S. E. 131.

For the reasons stated, the discharge prayed for is refused, and the relator remanded to the custody of the authorities of the city of Huntington.

Lynch, J., absent.

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INDIANA PUBLIC SERVICE COMMISSION.

IN RE FRANKLIN WATER, LIGHT, & POWER COMPANY.

[No. 1109.]

Security issues — Purpose — Discharge and refund of lawful obligations.

A water and electric company was authorized to issue and sell $6,000 of its first mortgage 5 per cent gold bonds, to be sold at 80 per cent of par value with accrued interest, for the purpose of discharging and refunding lawful obligations of the company.

[July 15, 1915.]

APPLICATION to issue securities for the discharge and refund of lawful obligations; granted.

By the Commission: On the 18th day of November, 1914, the Franklin Water, Light, & Power Company, of Franklin, Indiana, filed with the Public Service Commission of Indiana, its petition, duly verified by Chester P. Wilson, its president, and Ira E. Guthrie, its secretary and treasurer, in which it alleges that the company has total assets amounting to $276,265.78; that its capital stock is $100,000; that it has issued and outstanding of its first and refunding mortgage bonds, $144,000; that said bonded indebtedness bears interest at the rate of 5 per cent per annum, payable semiannually, which bonded indebtedness matures serially on or before April 1, 1929; and that it desires to execute and issue $6,000 in principal amount of its first mortgage 5 per cent gold bonds, under and pursuant to the terms of a trust deed or mortgage executed by the Franklin Water, Light, & Power Company, to the Chicago Title & Trust Company, and Harrison B. Riley, as trustee, dated April 1, 1911.

That it desires to execute and issue certain bonds to the extent of 80 per cent of expenditures heretofore made by the said Franklin Water, Light, & Power Company for the construction of improvements, extensions, and betterments of the electric plant and distribution system and power plant and distribution system, and water distribution system of the company at and in the vicinity of Franklin, Indiana. Said expenditures amount-

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ing, in the aggregate, to the sum of $8,084.09; that said expenditures were made in part out of income and other moneys in the treasury of said company, and in part out of moneys borrowed by said company for such purpose; and is to discharge and refund the lawful obligations of said company incurred as aforesaid, and for the purpose of reimbursing itself for such part of said expenditures as were made out of income and other moneys in the treasury of the company; that the Franklin Water, Light, & Power Company asks consent of the Commission to sell and dispose of said bonds, the proceeds of such sale to yield the company not less than 80 per cent of the par value and accrued interest.

The Commission having had the above-entitled cause under consideration, and having heard the evidence, and being otherwise fully advised in the premises:

It is, therefore, *ordered* by the Public Service Commission of Indiana, that said Franklin Water, Light, & Power Company be and it is now hereby authorized to issue and sell $6,000 of its first mortgage 5 per cent gold bonds, to be sold 80 per cent of par and accrued interest, for the purpose of discharging and refunding the lawful obligations of said company as set forth in said petition, and for no other purpose.

It is further *ordered* by the Public Service Commission that no part of the proceeds arising from the sale of said $6,000 of bonds shall, at any time, be used for the payment of dividends to the stockholders of said company, or interest on any bonds, and that no part of said proceeds shall be used for any purpose other than as hereinabove set forth, without the consent of the Public Service Commission.

It is further *ordered* that the Franklin Water, Light, & Power Company issue its check, payable to the treasurer of the state of Indiana, in the sum of $9, as the statutory fee in this case.

It is further *ordered* by the Public Service Commission of Indiana, that within ninety days from date hereof, the Franklin Water, Light, & Power Company report to the Commission as to the expenditures made from the moneys derived from the sale of said bonds, to whom paid, and for what purpose.

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Note.—The Indiana Commission has also authorized the issuance of securities in the following cases:

In Re Chicago, L. S. & S. B. R. Co. No. 1207, Feb. 18, 1915, $303,000 par value first mortgage 5 per cent gold bonds, under the terms of its mortgage or deed of trust to the Cleveland Trust Company as trustee, dated August 15, 1907, $50,000 of the proceeds of which were directed to be applied to the payment of $50,000 par value 6 per cent equipment notes dated May 15, 1908, the residue to be applied to reimbursing the treasury of the company, for expenditures for equipments, improvements, betterments, extensions, additions to its property, $50,000 par value of its bonds to be sold at par, and the remainder at not less than 90 per cent of their par value.

In Re Pike County Teleph. Co. No. 1041, March 5, 1915, permission to sell additional $25,000 face value of twenty-year 6 per cent gold bonds, the proceeds to be used to pay indebtedness of company either in notes or open account created in purchasing material, appliances, supplies, for new constructions, extensions, and betterments, etc.

In Re South Bend, No. 1363, March 12, 1915, $50,000 4 per cent bonds, the proceeds to be used for the purpose of refunding outstanding bonds.

In Re Indianapolis Water Co. No. 526, March 12, 1915, authority to use $22,000 unexpended proceeds of bond issue of $326,000 for improvements and additions to property.

In Re United Gas & Electric Co. No. 1110, March 12, 1915, $27,000 5 per cent bonds to be sold at not less than 80 per cent of their par value, the proceeds to be used to reimburse the company for moneys expended for electric, gas, and miscellaneous construction work.

In Re New Albany Waterworks, No. 1111, March 12, 1915, $4,000 5 per cent bonds to be sold at not less than 85 per cent of their par value, the proceeds to reimburse the company for moneys expended for construction.

In Re Indianapolis Water Co. No. 1338, March 12, 1915, $94,000 4½ per cent bonds to be sold at 89½ per cent of their par value, the proceeds to be used for extensions and betterments.

In Re East Chicago & I. Harbor Water Co. No. 1339, March 12, 1915, $21,000 5 per cent bonds to be sold at not less than 86 per cent of their par value, the proceeds to be used for extensions and betterments.

In Re East Chicago & I. Harbor Water Co. March 20, 1915, amendment of order No. 1339 giving company permission to sell $11,000 par value of bonds to reimburse company for moneys expended for additions, betterments, and extensions to its property made in the year 1914.

In Re Vincennes Water Supply Co. No. 1380, March 20, 1915,

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$40,000 face value 6 per cent five-year notes for the purpose of refunding obligations.

In Re Electric Service Co. No. 1444, April 17, 1915, $5,000 capital stock at par, the proceeds to be used in constructing and operating a plant in the town of Milltown, Crawford county, Indiana, for the purpose of distributing and serving electric current for light and power.

In Re Indiana Gaslight Co. No. 1427, April 23, 1915, $88,000 of bonds secured by first mortgage, Central Trust Company, of Illinois, and William T. Abbott, trustees, to be sold at not less than 85 per cent of their par value, the proceeds to be applied to the payment of notes outstanding as a floating indebtedness, and issued on account of betterments and extensions made to the plant of the petitioner between November 1, 1912, and January 21, 1915.

In Re Central Indiana Lighting Co. No. 1124, May 3, 1915, supplemental order granting the company authority to issue and sell bonds to the face value of $105,500 of bonds secured by indenture to the Knickerbocker Trust Company and William B. Randall, trustee, dated May 1, 1907, bearing interest at the rate of 5 per cent, to be sold at not less than 82½ per cent of their par value.

In Re Greencastle Waterworks Co. No. 1449, May 4, 1915, twelve $1,000 6 per cent notes to be disposed of at not less than 95 per cent of their face value, proceeds to be used to discharge its indebtedness incurred on account of the purchase and installation of water meters.

In Re Montezuma, No. 1494, May 5, 1915, $4,200 5 per cent refunding bonds to be sold at an advance of par value.

In Re Indianapolis & C. Traction Co. No. 1495, May 6, 1915, $60,000 par value of notes to be sold at not less than 90 per cent of their face value, the proceeds to be used for refunding obligations.

In Re Chalmers, No. 1507, May 14, 1915, $5,999 5 per cent bonds to be disposed of at not less than par, the proceeds to be used for the construction of an electric lighting system.

In Re Merchants Heat & Light Co. No. 1492, May 14, 1915, $523,000 bonds and $144,000 stock to be disposed of at less than 85 per cent of their par value for the purpose of procuring funds to pay off floating indebtedness created on account of extensions and betterments.

In Re Anderson, No. 1485, May 14, 1915, $50,000 5 per cent bonds, proceeds to be used for improvements and betterments of municipal electric lighting plant.

In Re Union Traction Co. No. 1364, May 14, 1915, $50,557 lease notes to be disposed of at not less than par, the proceeds to apply on purchase price of electric car motors.

In Re South Bend Home Teleph. Co. No. 1337, May 15, 1915, $15,000 additional of its first and refunding mortgage 6 per cent gold bonds, such bonds to be beyond and in addition to $300,000 of

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bonds authorized on March 5, 1915, proceeds to be used for the purpose of settling and satisfying funded indebtedness to the amount of $315,333.33.

In Re Butler Utilities Co. No. 1225, May 18, 1915, $24,000 common stock to be sold at not less than par, proceeds to be used for purchase of electric light plant and equipment.

In Re Dyer, No. 1513, May 18, 1915, $10,000 5 per cent bonds to be sold at not less than their par value, proceeds to be expended for the construction and completion of a waterworks system.

In Re Citizens Teleph. Co. No. 1452, May 28, 1915, $25,000 6 per cent notes to refund obligations and to make expenses.

In Re North Vernon, No. 1597, June 19, 1915, $3,000 4 per cent bonds, the proceeds to be used for the extensions and improvement of electric light and water plant.

In Re Interstate Public Service Co. No. 1542, July 2, 1915, $44,000 first and refunding mortgage gold bonds to be sold at not less than 80 per cent of their par value, proceeds to be used for capital purposes.

In Re Central Indiana Lighting Co. No. 1594, July 2, 1915, $3,500 first and refunding mortgage 5 per cent sinking fund gold bonds to be sold at not less than 80 per cent of their par value, proceeds to be used for capital expenditures.

In Re Farmers & Merchants Co-op. Teleph. Co. No. 1624, July 9, 1915, $6,500 6 per cent notes to be sold at not less than par, proceeds to be used for the purchase and installation of poles, wires, and other appliances necessary to fully complete telephone exchange and system.

In Re Danville Light, Heat, & P. Co. No. 1661, July 30, 1915, $100,000 first mortgage gold bonds, $80,000 of the proceeds of which to be used for refunding obligations, the remaining $20,000 not to be issued until further order of the Commission, bonds to be sold at not less than 90 per cent of their par value.

MAINE PUBLIC UTILITIES COMMISSION.

IN RE NORTH YARMOUTH WATER COMPANY.

[U-46.]

Security issues — Bonds — New company.

1. A utility applying for authority to issue bonds to provide funds for constructing a plant in new territory must be treated as a new utility seeking authority to secure its entire capital, where it has sold its entire plant and business in the old territory, and distributed its assets among its stockholders.

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Valuation — Security issues — Franchise value.

2. Franchise value cannot be considered as an asset of a utility for capitalization purposes.

Security issues — Amount — New company — Cost of purchased property.

3. No more than the cost of property purchased by a utility can be considered as an asset, although it was purchased before the Public Utilities act became operative, where it is capitalized as an asset of a new enterprise.

Security issues — Bonds — New company — Margin of stock.

4. The Maine Commission will not authorize a new utility to issue bonds unless there is a substantial capital stock margin representing value.

Security issues — Amount — Bonds — New company — Margin of stock.

5. The Maine Commission authorized a new water utility to issue 5 per cent mortgage bonds to an amount which when sold on not less than a 6 per cent basis would net two thirds of the cost of constructing and equipping its plant, provided that stock costing the holders nothing and representing but small tangible assets should be reduced in amount to not less than one third of the cost of the plant, and provided that sufficient cash should be paid in for the stock to equal, when added to the value of such assets, one third of the cost of the plant.

[August 11, 1915.]

APPLICATION for authority to issue bonds to provide for the construction of a plant. The Commission stated that if the stockholders would reduce the amount of the capital stock to not less than one third the cost of the plant, and pay cash for the same in excess of the value of tangible assets, it would authorize an issue of bonds sufficient in amount to provide for the remaining two thirds of the cost of the plant, and would hold the application open for a reasonable time pending action on its suggestions.

Appearances: Howard Davies for petitioner. No one appeared in opposition.

By the **Commission**: Petition by North Yarmouth Water Company, a corporation organized under chapter 56, Private and Special Laws of 1909, for permission to issue twenty-year 5 per cent mortgage bonds of the aggregate amount of $10,000 to provide funds for constructing and equipping a water plant to furnish water for fire and domestic purposes in the town of North Yarmouth, for fire protection in Cumberland, and as an additional source of supply to the Yarmouth Water Company at a point

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of delivery located in the town of North Yarmouth. Petition dated July 12, 1915. Public notice ordered and proved. Hearing held July 22, 1915.

The petitioner was originally engaged in the same business, serving a territory different from the several purposes than that now intended to be served. It conveyed its entire plant and business to the Cumberland Water Company, which has continued its operations in the territory then served. The consideration for this conveyance was $3,000 in cash, the exact amount which the stockholders of the North Yarmouth Company had paid in as capital. This amount was returned in cash to these stockholders, and the company ceased to do business. Instead, however, of retiring the stock and dissolving the corporation, the certificates of stock were transferred to three of the principal stockholders in the Cumberland Company, ten shares each; so that the Cumberland Company became the owner of the property of the North Yarmouth Company, the capital of the latter company converted into cash was withdrawn and distributed among its stockholders, and the naked certificates of stock (naked except as stated below, became the property of certain individuals interested in the Cumberland Company, who now desire to revive the North Yarmouth Company, and to do the business indicated above.

This Commission has taken the testimony of petitioner's representatives, from which it appears that it owns, subject to the right to cut ice, about one fourth of an acre of land, forming a natural reservoir, through which a small stream flows, furnishing a constant supply of water, and for which it paid $100. It also owns pipe worth from $200 to $300. This constitutes its entire tangible property. It estimates the cost of building a concrete reservoir and dam at $1,000, and the cost of necessary pipe lines at $5,000. It will be a gravity system.

The Commission's engineer has made a careful study of the situation on the ground, and reports that the reservoir contemplated would hold about 52,500 cubic feet of water, fed by a small brook which collects the natural run-off from Walnut Hill, which is covered with trees and vegetation, and should be free from contamination. He estimates the flow at from 1 to 3 gallons per second, depending on the rainfall, and the time required to

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fill the reservoir at 2¼ gallons per second at about forty-eight hours.

The engineer estimates the cost of constructing the plant sufficient for all of the purposes indicated by the petitioner and including the price paid by it for the reservoir site at $5,906, which does not differ materially from petitioner's estimate. His investigation and report substantially corroborate the petitioner's representations to the Commission as to market for its product and probable revenue therefrom.

[1] It remains, therefore, only for the Commission to determine the amount of bonds which should be authorized and the conditions under which they may be issued. While the amount involved in this matter is small, the case presents a novel question, which is likely to recur and on which the policy of the Commission may as well now be made clear.

The company's balance sheet is as follows:

Assets.

Franchise, chap. 56, Laws of 1909	$3,000.00
Real estate free of encumbrances	500.00
Pipe suitable for laying water main, couplings, and elbows	300.00
	$3,800.00

Liabilities.

Capital stock, outstanding	$3,000.00
Surplus	800.00
	$3,800.00

The facts already stated show that there has been withdrawn from the corporation all of the cash that ever was paid in as capital; that the corporation parted with all of its tangible assets except real estate which cost $100 and pipe, etc., whose value is not claimed to exceed $300, and that it ceased to do business. Practically, it is a new corporation seeking authority to secure its entire capital, and must be treated as such.

[2, 3] This being true, we believe that the policy adopted by this Commission in Re Black Stream Electric Co. U–25, P. U. R. 1915C, 361, should govern. While the original certificates of stock are still outstanding, the value which they represented has been withdrawn dollar by dollar by their former owners. Except for $400 at most, they now represent no tangible assets. Unless they are vitalized by new money, substantially the entire undertaking will be financed from bonds. It is well

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settled that franchise value cannot be considered as an element in rate making, and this bookkeeping asset would therefore be valueless any time the question of rates might be raised. The Commission could not permit the petitioner to construct a plant on $6,000 of bonds and exact rates to provide a return on $9,000 of capitalization. So far as the book value of the real estate is concerned, the corporation paid $100 for it. It may have been, and probably was, an excellent trade,—might have been at $500. But the accounting rules of this Commission require purchased property to be carried at cost, and although it was purchased before the Public Utilities act became operative, considerating this in effect as equivalent to capitalizing a new enterprise, we do not think that we ought to deviate from the rule.

[4] We then have in effect a new corporation with assets capitalizable at $400. All outstanding stock above that represents nothing that can now be considered, or that would give it earning value in the hands of possible future purchasers. This construction is no hardship upon its present owners, because it cost them nothing. Before additional securities are issued, all in excess of $400 should be turned into the treasury or made good by the advancement to the corporation of an equivalent amount of cash. Bonds should not be authorized without a substantial capital stock margin.

[5] If, therefore, the present stockholders will reduce the amount of capital stock outstanding to not less than $2,000 par value, and pay into the treasury of the corporation cash for all stock remaining outstanding in excess of $400, at par, the Commission will grant an order authorizing the issue of 5 per cent mortgage bonds sufficient to secure a combined capital of $6,000, when said bonds are sold on not less than a 6 per cent basis.

The case will remain open a reasonable time pending action of the petitioner on the foregoing suggestions.

Given under the hand and seal of the Public Utilities Commission, at Augusta, this 11th day of August, A. D. 1915.

Benjamin F. Cleaves, Wm. B. Skelton, Public Utilities Commission of Maine.

Note.—The Commission has also authorized the issuance of securities in the following cases:

In Re Vinalhaven Electric Co. April 9, 1915, $60,000 capital

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stock, and $60,000 first mortgage 6 per cent twenty-year gold bonds, to be sold at not less than 90, the proceeds to be used to pay for construction of property, and the acquisition of property and franchises.

In Re Androscoggin Electric Co. No. U-22, May 4, 1915, $149,000 first and refunding mortgage 5 per cent bonds, the proceeds to be used in payment of extensions, enlargements, and additions.

In Re Lewiston, A. & W. Street R. Co. No. 36, May 6, 1915, $750,000 5 per cent notes and authority to deposit with the Fidelity Trust Company of Portland, Maine, trustee, $853,000 first and refunding 5 per cent bonds, such notes to be sold for not less than 94.67 per cent of their face value, the proceeds to be used for payment for extensions and additions to property.

In Re Portland & R. Falls R. Co. No. 38, May 20, 1915, $300,000 4 per cent debenture coupon bonds of the Portland & Rumford Falls Railway, and authority to the Maine Central Railroad Company to guarantee the payment of the same, proceeds to be used for permanent additions and improvements, any excess realized from the sale of such bonds to be held by the Maine Central Railroad Company subject to the further order of the Commission.

In Re Brunswick & T. Water Dist. U-28, May 20, 1915, $20,000 4 per cent bonds, proceeds to be used for the payment of certain promissory notes and in new construction, improvements, and betterments.

In Re Bar Harbor & U. River Power Co. U-27, May 25, 1915, $25,000 first and refunding 5 per cent gold bonds, the proceeds to be used for extensions, betterments, and permanent improvements.

In Re Houlton Water Co. U-31, May 28, 1915, $25,000 5 per cent bonds to be sold at not less than par, the proceeds to be used in payment for outstanding promissory notes amounting to $21,000, and in payment for additions to its property.

In Re Turner Light & Power Co. U-35, June 10, 1915, $30,000 capital stock, $10,000 of which being 6 per cent cumulative preferred stock and the balance common stock, $10,000 of such common stock to be used in payment for property purchased under order granted in U-34; authority to sell balance of capital stock, being preferred stock, not to exceed $10,000, and common stock not to exceed the difference between the par value of the preferred stock sold and the sum of $20,000 at not less than par, the proceeds to be used in the equipment and improvement of the company's plant and for working capital.

In Re Westbrook Electric Co. U-38, June 25, 1915, $115,000 capital stock, $110,000 of which to be used for the purchase of property and franchises, $2,400 for the purchase of additional equipment, and $2,600 for working capital.

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In Re Jordan's Bay Boat Co. U-45, July 16, 1915, $1,200 capital stock for the acquisition of property.

In Re York County Water Co. U-47, July 22, 1915, $237,000 first and refunding 5 per cent mortgage bonds, $70,000 preferred capital stock, bonds to the amount of $185,500 to be sold at not less than 89 per cent of their par value, and the stock to be sold at not less than par, and the bonds and stock to be exchanged, and the proceeds of the stock authorized to be sold to be used for the refunding of obligations, and to pay for extensions and improvements.

MAINE PUBLIC UTILITIES COMMISSION.

IN RE KENNEBEC FARM & CITY TELEPH. CO.

[U-18.]

Security issues — Bonds — Postponement of consideration of application.

The Commission refused to consider an application of a telephone company for permission to issue bonds to provide for the payment of overdue bonds, unmatured bonds, and floating indebtedness, and to provide for extensions, until after the company had made an effort to collect either the difference between the par value and amount paid for stock or amounts from stockholders sufficient to pay the overdue bonds, where a provision of the by-laws requiring stockholders to make such annual payments as will retire outstanding bonds at their maturity has not been enforced, and, by reason of the assets being less than liabilities, there is no equity to secure the proposed bond issue.

[June 10, 1915.]

APPLICATION for permission by a telephone company to issue bonds to provide for the payment of overdue bonds and other obligations, and to provide for extensions. A by-law requiring stockholders to make annual payments sufficient to retire outstanding bonds at their maturity had not been enforced, and if stockholders had been required to pay the rates charged other subscribers they would have paid an amount equal to what they owed on their stock. The Commission held the case for final disposition until after the company made effort to collect either the amount owing on the stock or an assessment sufficient to retire the overdue bonds, and stated that the rates should be readjusted so as to eliminate the disconnection in form of the stockholders.

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By the **Commission**: The Kennebec Farm & City Telephone Company filed its petition asking permission to issue bonds of the aggregate par value of $5,000, bearing interest at 6 per cent. Notice was ordered and proved. Hearing was held on April 9, 1915, and after taking of such evidence as the petitioner was prepared to present was adjourned for further examination of its books and records, which was made on April 21, 1915.

The petitioner is a corporation organized under the general law in 1908, and began to operate in 1909. It has outstanding 193 shares of capital stock of the par value of $20 per share, which is carried in its balance sheet at the full face value of $3,800.

January 1, 1909, the corporation made an issue of bonds amounting to $5,000 maturing $1,000 annually, beginning January 1, 1912, which was in excess of the explicit provisions of § 9, chapter 55, Revised Statutes, which limited the amount of bonds issued to the amount of "capital stock of the corporation actually paid in at the time." Of this amount $4,200 was actually sold, $1,000 of which has been redeemed. The balance, $3,200, is still outstanding, $2,200 being overdue. The proposed issue is to be devoted, $2,200 to the redemption of the overdue bonds, $1,000 reserved to pay the bonds due January 1, 1916, and $1,800 for the payment of floating indebtedness and to provide for extensions.

The petition was accompanied by the following balance sheet as of March 18, 1915:

Liabilities.

Six per cent bonds	$3,200.00
Interest bearing notes and orders	2,317.01
Open accounts	1,384.00
Stock, outstanding	3,860.00
	$10,761.01

Assets.

Cash on hand and due from subscribers	$ 85.00
Telephones, wire, and material unused	150.00
Rental telephones, owned by company	500.00
Switch-boards	225.00
Pole and wire lines	9,801.01
	$10,761.01

It appeared at the hearing that the last item, "pole and wire lines," was arrived at by subtracting the sum of the other

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asset items from the total of liabilities. Subsequently at the request of the Commission the petitioner filed a schedule of all of its assets except "cash on hand and due from subscribers," which at its own figures, first cost, amounted to $7,395.50. Add the item of $85 cash and receivables, and total assets without any deductions for depreciation are $7,480.50. This gives a reconstructed, condensed balance sheet as follows:

Total liabilities		$10,761.01
Total assets	$7,480.50	
Deficit	3,280.51	
		10,761.01

The stockholders own one share each of the par value of $20, for which each paid $10 in cash or equipment taken as cash. So that the item of stock outstanding actually represents no more than $1,930 paid in. The certificates of stock do not recite whether the same is fully paid or assessable. The constitution and by-laws provide that "the owner of one and not more than two shares of the capital stock of this corporation, fully paid for, at the rate of $20 a share," etc., shall become a member of the corporation. Provision is made for assessments upon stockholders for "service bills." The further provision is made that, while any bonds issued "are outstanding, a sufficient amount shall annually be collected and set aside by the treasurer to pay maturing principal and interest."

The only assessments thus far made appear to have been for service charges, made up in such manner as ostensibly to include interest charges, but in fact a flat net charge upon stockholding subscribers of $8 per annum payable quarterly, seldom or never providing the exact amount required to meet disbursements. Included in the receipts of the corporation have been the rentals from nonstockholding subscribers. It appears to have expended in additions, etc., from its receipts, $219.75.

The corporation has 179 stockholding subscribers, 57 nonstockholding, and 8 pay stations. Its net annual service charge or rental for stockholders is $8 for nonstockholders from $12 to $20, according to the number on the line. The stockholders furnish their own inside equipment.

Under the provisions of the by-laws it was the duty of the officer to assess, and of the stockholders to pay, annually enough

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to retire the maturing bonds. This would have taken care of the $2,200 now overdue. Under the laws of the state the stockholders are liable to the creditors of the corporation for the full payment of their stock, to the amount of the indebtedness. This would amount to $1,930. Neither of these amounts is sufficient to meet the deficit shown by the petitioner's corrected statement. It is claimed that the $219.75 expended for purposes other than maintenance should be credited to assessments on stock not fully paid for; but this appears rather to have come chiefly from regular service charges from all sources, and a comparison of these charges would not indicate that the stockholding subscribers are paying more than their proportion.

It is also suggested that the schedule of assets does not include anything for organizing expense, franchises, interest on capital invested, and such other items as might be charged to capital. This appears to be true. There is no evidence to show the amount of these items, nor, on the other hand, what amount should be deducted for depreciation.

It seems that, had the stockholding subscribers paid for the service at the same rates charged other subscribers less a fair rental for the equipment furnished by them (the petitioner claims a value of only $10 each for its own rented telephones), they would already have paid in excess of their present rates the amount they now owe on their stock and enough to provide a fair annual return on their money invested. On the whole we feel that in view of the express provisions of the by-laws the stockholders should discharge their legal obligations before the corporation is authorized to encumber its property with further mortgages, especially in view of the fact that, instead of an equity to secure such obligations, it now has a deficit of approximately 30 per cent of its entire liabilities, including stock outstanding. It should also readjust its rentals so that there may be no discrimination between stockholding subscribers and non-stockholders. This it must do at once in order to comply with the Public Utilities act.

It is therefore recommended that the corporation seek to collect on or before September 1, 1915, the further sum of $10 per share on its outstanding capital stock, or in lieu thereof assessments sufficient to provide for the payment of its overdue bonds, as it may elect; and report to the Commission within

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ten days after said date. To which time this case will be held for final disposition.

Given under the hand and seal of the Public Utilities Commission, at Augusta, this 10th day of June, A. D. 1915.

Benjamin F. Cleaves, Wm. B. Skelton, Chas. W. Mullen, Public Utilities Commission of Maine.

MAINE PUBLIC UTILITIES COMMISSION.

IN RE BANGOR & AROOSTOOK RAILROAD COMPANY.

Security issues — Car trust certificates.

1. Car trust certificates issued by a trustee for the purpose of providing a railroad company with funds to purchase rolling stock are securities, and the issuance thereof is within the provisions of the Public Utilities acts governing the issuance of securities.

Security issues — Purpose — Purchase of locomotives.

2. A railroad company was authorized to issue 5 per cent car trust certificates, to the amount of $85,000 to provide for the purchase of five new locomotives.

[April 9, 1915.]

APPLICATION for permission to issue car trust certificates; granted.

Appearances: Joseph F. Gould, Esq., counsel for the Bangor & Aroostook Railroad Company, for the petitioner. No one appeared in opposition.

By the **Commission**: This is a petition of the Bangor & Aroostook Railroad Company for approval by this Commission of the issuing of certain securities to enable it to purchase five new locomotives.

Upon this petition notice of public hearing was ordered, to be held at the office of this Commission on this 9th day of April, 1915, and notice as ordered was given.

Now, upon this 9th day of April, 1915, at said public hearing, the following are made to appear as the facts and circumstances:

The Bangor & Aroostook Railroad Company required five new locomotives, which would cost about $85,000. It was not convenient for the company to pay for them in cash, and so it availed itself of a plan which seems to have been quite generally used

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throughout the country in recent years by railroad companies, and is what is known as a "car trust." It seems that in this instance a corporation known as the Pennsylvania Company for Insurances on Lives and Granting Annuities is to act as trustee, and, as such, has entered into an agreement with the Bangor & Aroostook Railroad Company, by which the trustee receives what are known as "subscriptions," to the amount of $85,000, and issues to each subscriber of $1,000 a certificate showing that he is the owner of one share in the car trust. The principal is payable at the rate of $8,000 in some years and $9,000 in others, so that the holders of some certificates will be paid in 1915, and the holders of others will be paid in succeeding years, the last in 1924.

The securities bear interest at the rate of 5 per cent, and to each certificate is annexed a dividend warrant calling for the semiannual payment of $25, and upon each certificate and each dividend warrant is the written guaranty of the Bangor & Aroostook Railroad Company of the payment of principal and interest.

[1] It will thus be seen that these securities are not in the form in which securities, as we ordinarily understand that term, are, but the courts have decided that these car trust certificates are securities, and that the issuance of them is within the provisions of Public Utilities acts of various states. See, for instance, the case of People v. New York C. & H. R. R. Co. 138 App. Div. 601, 123 N. Y. Supp. 125.

At the hearing the petitioner presented a copy of its balance sheet as of January, 1915; a certified copy of the resolution of its board of directors, authorizing the proper and legal consummation in all its details of the car trust series F, above referred to; presented a copy of the agreement between the petitioner and the Pennsylvania Company for Insurances on Lives and Granting Annuities; all of which are on file with the Commission, and are adjudged to be in proper form.

Petitioner also presented to the Commission all the other facts necessary or required for a full understanding of the matter.

[2] The purposes for which such securities are to be issued are lawful under the statutes governing the issuance of securities, and it is necessary for the company to acquire the property to pay for which such securities are to be issued.

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Now, after such notice, full investigation and public hearing, it is *ordered* that the Bangor & Aroostook Railroad Company is hereby authorized to issue the securities described in its petition, and more particularly set forth in exhibit A annexed to said petition, the same consisting of certificates numbered from 1 to 85, inclusive, and each of the denomination of $1,000, payable as in exhibit A set forth, bearing interest at 5 per cent, and each bearing date October 1, 1914; and that with the proceeds of such securities the petitioner purchase, in the manner set forth in its said petition, five locomotives, numbered 180, 181, 182, 183, 184, now the property of the American Locomotive Company. Within twenty days after October 1, 1915, and each six months thereafter during the life of any of said certificates, the Bangor & Aroostook Railroad Company is required to report to this Commission the manner in which it has complied with this order, and in such report show to the Commission whether said certificates and interest thereon are being paid in accordance with the terms thereof:

That any excess over said sum of $85,000 which may be secured as a result of the issuance of the above-named securities, including any sum which may be realized from premiums, shall be held by the petitioner for such application by petitioner as this Commission shall hereafter approve.

Given under the hand and seal of the Public Utilities Commission, at Augusta, this 9th day of April, 1915.

Benjamin F. Cleaves, Wm. B. Skelton, Chas. W. Mullen, Public Utilities Commission of Maine.

Note.—The above order was modified on June 8, 1915, by authorizing the issuance of the securities to the amount of $71,000, to be dated as of May 1, 1915, and interest to be payable May 1 and November 1 of each year.

MASSACHUSETTS BOARD OF GAS AND ELECTRIC LIGHT COMMISSIONERS.

PETITION OF THE MARLBOROUGH-HUDSON GAS COMPANY.

Security issues — Structural value — Condition as to dividends.

A gas utility was authorized to issue and sell stock to the amount

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of $70,000 at par, the proceeds to be applied to the payment and cancelation of an equal amount of its promissory notes that were used to pay for extensions, additions, and improvements to its plant and property, on condition that no dividend should be paid in any year in excess of 5 per cent upon its capital stock until the fair structural value of its plant and land should be made equal to the amount of its outstanding stock and debt, by expenditures from income either to reduce the indebtedness or to make additions to the plant.

[July 9, 1915.]

APPLICATION for authority to issue capital stock; granted in part upon conditions.

Appearances: E. C. Mason for applicant.

By the Board: This is an application by the Marlborough-Hudson Gas Company for the approval of an issue of additional capital stock of the par value of $89,000 for the purpose of raising money to be applied to the payment of liabilities incurred for extensions, additions, and improvements to its plant and property.

On April 1, 1915, the company had outstanding capital stock to the amount of $247,000, bonds to the amount of $9,000, and promissory notes to the amount of $178,525. On August 3, 1910, the Board approved of the issue of additional stock to the amount of $180,000 at par, of which the proceeds of 400 shares were to be applied to the cost of an extension of its mains into Westborough and of 500 shares to the payment and cancelation of its bonds then outstanding to the amount of $50,000. Owing to an unexpected change in the company's plans with respect to the Westborough extension, this expenditure has not been made and is still in abeyance, and the 400 shares authorized for this purpose have never been issued. Moreover, the company has issued and applied but 270 of the shares whose proceeds were to be devoted to taking up its bonds, and the balance of the bonds retired are represented in the floating debt. In the approval mentioned the Board also authorized stock of the par value of $65,000 for additions to plant made subsequent to June 30, 1910. Between that date and April 1, 1915, the company's expenditures upon its plant exceeded this amount by more than the stock named in the pending petition and are represented in its notes outstanding on the latter date. The bulk of these expenditures have been upon the distribution system, including the laying of a main to the Framingham

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line at a cost of some $36,000 for conveying the gas purchased of the West Boston Gas Company. To the extent hereinafter approved, they may properly be capitalized. The making of this contract with the West Boston company and the shutting down of the company's works have emphasized the depreciation which has occurred in the value of its plant in excess of the provision therefor. After an examination and study of its property and affairs, the Board finds that the fair structural value of its plant and land is less than its outstanding stock and debt to the extent of $43,000.

The following is therefore adopted:—

On the petition of the Marlborough-Hudson Gas Company, pursuant to the provisions of § 39 of chapter 742 of the Acts of the year 1914, for the approval of an issue of additional capital stock of the par value of $89,000 for the objects named in said petition, after public notice and hearing, it being deemed by the Board that the amount of stock hereinafter named is reasonably necessary for the purpose for which such issue is authorized, it is—

Ordered that the Board hereby approves of the issue by the Marlborough-Hudson Gas Company, in conformity with all the requirements of law relating thereto, at the price of $100 a share, as determined by its directors, of 700 shares of new capital stock of the par value of $100 each; the proceeds of said stock to be applied to the payment and cancelation of an equal amount of the obligations of the company represented by its promissory notes outstanding on April 1, 1915, and to no other purpose.

And if any shares shall remain unsubscribed for by the stockholders entitled to take them under the provisions of law relating thereto, it is further—

Ordered and *determined* by the Board that all such shares shall be offered for sale at some suitable place in the city of Boston, and that notice of the time and place of such sale shall be published in the "Boston Daily Advertiser" and the "Boston Evening Transcript," newspapers published in the city of Boston, and in the "Marlborough Enterprise," a newspaper published in the city of Marlborough.

And whereas, it appears that the fair structural value of the plant and of the land of said company, after the issue of said stock

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for the purpose above set forth, will be less than its outstanding stock and debt:—

Ordered, further, that from and after the 30th day of June, 1915, the said company shall neither declare nor pay in any year dividends in excess of 5 per cent upon its capital stock, until it shall have paid and canceled out of income not less than $43,000 of its indebtedness remaining after the issue of the new capital stock above described or heretofore authorized for the payment of bonds, or shall have expended the said amount out of its income for additions to its plant after said date, or until the said amount has been expended out of income for both said purposes combined, or until otherwise ordered by the Board.

Note.—The Massachusetts Board of Gas and Electric Commissioners has also approved the following issuances of securities:

In Re Manchester Electric Co. Feb. 16, 1915, capital stock of the par value of $55,000 to be issued at the price of $100 a share, the proceeds thereof to be applied to the payment and cancelation of an equal amount of outstanding promissory notes issued in payment for construction.

In Re Onset Water Co. April 7, 1915, bonds to the amount of $25,000 payable at not exceeding twenty years from the date thereof, and bearing interest at a rate not exceeding 5 per cent per annum, such bonds to be issued at not less than par and accrued interest, the proceeds thereof to be applied to the payment and cancelation of other outstanding bonds and outstanding promissory notes.

In Re Gardner Electric Light Co. April 10, 1915, 163 shares of common stock of the par value of $100 to be sold at par, and 163 shares of preferred stock of the par value of $100 to be sold at $145 a share, proceeds to be applied to the payment of outstanding unsecured promissory notes given for expenditures on plant since September 30, 1912. The Commission refused to approve stock for expenditures prior to that date.

In Re Milbury Water Co. April 16, 1915, bonds to the amount of $85,000 payable at not exceeding twenty years from the date thereof and bearing interest at a rate not exceeding 5 per cent per annum, such bonds to be issued at not less than par and accrued interest, and the proceeds thereof to be applied to the payment and cancelation of all of the outstanding bonds of the company.

In Re Plymouth Electric Light Co. May 3, 1915, capital stock to the par value of $90,000, to be issued at the price of $100 per share, the proceeds of $80,000 thereof to be devoted to the payment and cancelation of an equal amount of obligations of the company repre-

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sented by its promissory notes, and the balance to be devoted to the cost of additions to the plant of the company.

In Re Cambridge Electric Light Co. May 6, 1915, capital stock of the par value of $100,000 to be issued at the price of $200 a share, the proceeds thereof to be applied to the payment and cancelation of outstanding promissory notes, and to the payment of the cost of additions made to the plant.

In Re Lynn Gas & Electric Co. May 6, 1915, capital stock of the par value of $442,500 to be sold at the price of $240 a share, the proceeds thereof to be devoted to the payment and cancelation of outstanding promissory notes and to the payment of the cost of additions to the plant.

In Re Salisbury Water Supply Co. May 24, 1915, common stock to the amount of $35,000, the proceeds thereof to be devoted to acquiring the capital of the Artesian Water Company; preferred stock to the amount of $35,000 and bonds to the amount of $70,000 payable at not exceeding twenty years from the date thereof and bearing interest at a rate not exceeding 5 per cent per annum, and secured by a first mortgage, said bonds to be issued at not less than par and accrued interest, the proceeds of the preferred stock and the bonds to be applied to the obligations of the company on account of the acquisition of certain lands, buildings, machinery, mains, sewers, and other equipment.

In Re New Bedford Gas & Edison Light Co. June 3, 1915, capital stock to the amount of $260,000 to be issued at the price of $200 per share, and the proceeds thereof to be applied to the payment and cancelation of outstanding promissory notes issued for permanent additions and extensions to the plant of the company.

In Re West Boston Gas Co. June 18, 1915, capital stock to the par value of $147,500 to be sold at $100 a share, proceeds thereof to be applied to the payment and cancelation of promissory notes issued by the company for additions to the plant.

In Re Plymouth Gaslight Co. July 6, 1915, capital stock to the par value of $40,000 to be sold at the price of $100 per share, proceeds thereof to be devoted to the payment and cancelation of certain promissory notes, and the payment of the cost of additions to the plant.

In Re Southwick Electric Co. July 12, 1915, original capital stock to the par value of $6,000, the proceeds thereof to be applied to the purchase and erection of lines, street lamps, and other distribution equipment.

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NEW YORK PUBLIC SERVICE COMMISSION, SECOND DISTRICT.

IN RE ULSTER & DELAWARE RAILROAD COMPANY.

[Decision No. 221; Case No. 4873.]

Rates — Powers of Commission — Mileage books.

1. The New York Commission is without power to permit a railroad company authorized by statute to charge a maximum fare of 3 cents per mile and charging a maximum fare of more than 2 cents per mile to increase its mileage books rates from 2 cents per mile to 3 cents per mile, although its return from passenger service may be inadequate, since § 60 of the railroad law, commonly known as the mileage book law, which absolutely prohibits the company from charging more than 2 cents per mile for such books, is not in conflict with the public service law, and is not, expressly or by implication, repealed by it.

Constitutional law — Rate-making power — Delegations.

2. The power to fix rates, being purely a legislative function, its delegation should be in express terms, and not by implication, or, at least, the implication should be so undeniably manifest as to be the substantial equivalent of an expressed declaration.

[July 6, 1915.]

APPLICATION of the petitioner, a railroad company, for approval of an increase in its mileage book rates under § 49 of the Public Service Commissions law; denied.

Appearances: H. H. Flemming, and Lewis E. Carr for the applicant; Frank H. Deal for the Grand Council of New York State of the United Commercial Travelers of America; William D. Brinnier for the town board of the town of Olive, for the village of Pine Hills, for U. S. Grant Cure, and for various residents along the line of the railroad; George Speenburgh for the village board of the village of Fleischmanns; E. W. Elmore, president, W. H. Lee, vice president, and J. F. Thompson, attorney, for the Chamber of Commerce.

Van Santvoord, Chairman: This is an application of the Ulster & Delaware Railroad Company for leave to increase its mileage book rates from 2 cents per mile to 3 cents per mile, upon the grounds that its returns for passenger service rendered are inadequate, and that the cost of transportation per passenger mile is in excess of its present mileage book rate, and that passengers using mileage tickets are accordingly being carried at a loss to the railroad company.

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The Ulster & Delaware Railroad Company was organized in 1901 by consolidation of previously incorporated railroad corporations, its lines are more than 100 miles in length, it is allowed by law to charge a maximum fare of not to exceed 3 cents a mile, and does charge more than 2 cents per mile. Within the terms of the decision in Purdy v. Erie R. Co. 162 N. Y. 42, 48 L.R.A. 669, 56 N. E. 508, the petitioner is accordingly subject to the requirements of § 60 of the railroad law [chap. 49 of the Consolidated Laws, § 60] commonly known as the mileage book law, and which reads as follows:

"*Issue and use of mileage books.*—Every railroad corporation operating a railroad in this state, the line or lines of which are more than 100 miles in length, and which is authorized by law to charge a maximum fare of more than 2 cents per mile, and not more than 3 cents per mile, and which does charge a maximum fare of more than 2 cents per mile, shall issue mileage books having either 500 or 1,000 coupons attached thereto, entitling the holder thereof, upon complying with the conditions hereof, to travel either 500 or 1,000 miles on the line or lines of such railroad, for which the corporation may charge a sum not to exceed 2 cents per mile. Such mileage books shall be kept for sale by such corporation at every ticket office of such corporation in an incorporated village or city, and any of such books shall be issued immediately upon application therefor. Upon presentation of such mileage book to a conductor on any train, on any line of railroad owned or operated by said railroad corporation, the holder thereof, or any member of his family or firm, or any salesman of his firm, shall be entitled to travel for a number of miles equal to the number of coupons detached by such conductor. Such mileage book shall entitle the holder thereof to the same rights and privileges in respect to the transportation of person and property to which the highest class ticket issued by such corporation would entitle him. Such mileage books shall be good until all coupons attached thereto have been used. Any railroad corporation which shall refuse to issue a mileage book, as provided by this section, or in violation hereof, to accept such mileage book for transportation, shall forfeit $50, to be recovered by the party to whom such

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refusal is made; but no action can be maintained therefor unless commenced within one year after the cause of action accrues."

[1] Authority to grant this application is predicated upon § 49 of the Public Service Commissions law, from which are mainly derived the powers of the Commission to fix railroad rates and service. The majority of the Commission are of opinion that it has no power to grant the relief prayed for, because of the express requirements of § 60 of the railroad law, which section we find has never been repealed, expressly or by implication, and to modify, suspend, or disregard which the Commission is without authority. In arriving at this determination, we have not overlooked § 127 of the Public Service Commissions law, which provides that "All other acts and parts of acts otherwise in conflict with this act are hereby repealed." The mileage book law, as will become manifest in the ensuing discussion, no more conflicts with the Public Service Commissions law than does the law prescribing the maximum rates for common carriers, the "80 cent gas law" for New York city, and various other statutory requirements, approval of any violation of which, as will be hereafter pointed out, are especially excluded from those general supervisory powers with which the Commission has been invested.

It will be conceded that standing by itself, § 57 of the railroad law fixes at 3 cents per mile the maximum rate of fare allowed in this state for the transportation of a passenger by any railroad corporation whose lines exceed 100 miles in length; and similarly, that standing by itself, the so-called mileage book law (§ 60 of the railroad law) compels every such corporation which may charge up to 3 cents per mile, and actually charges more than 2 cents per mile, to issue mileage books at not to exceed 2 cents per mile. It is now proposed to allow the Ulster & Delaware Railroad Company, which admittedly is subject to the requirements of the statutes quoted, to issue mileage books at 3 cents per mile, because of its necessities in respect of that reasonable average return, etc., to which it is entitled under the law. In other words, the petitioner, which since its organization in 1901 has, in compliance with law, issued its mileage books, being a form of reduced fare ticket, at the rate of 2 cents per mile, which is the maximum legal rate for such mileage,

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now asks leave to issue such mileage books at the rate of 3 cents per mile, being the maximum rate of fare which it is permitted by law to charge for any form of ticket.

The mileage book law was enacted in 1895. It was not repealed when the Public Service Commissions law was enacted. On the contrary, when under chapter 480 of the Laws of 1910 the Public Service Commissions law was re-enacted as chapter 48 of the Consolidated Laws, the Mileage book law was re-enacted in its then precise form in chapter 481 of the Laws of 1910, known as chapter 49 of the Consolidated Laws. It has thus not only never been expressly repealed, but having been re-enacted under numerically later chapters of the Laws of 1910 and of the Consolidated Laws respectively than the corresponding chapter enumeration of the re-enacted Public Service Commissions law in that year, the difficulties of any argument that it has been repealed by implication are intensified. Let us assume, as I think we must, that no such repeal has ever been made or intended. But if the present application is granted. as far as the petitioner and its patrons are concerned, the mileage book law will be practically repealed by this Commission,—in all respects, at least, except the naked privilege of purchasing that particular form of ticket at the identical rate charged for a ticket in the ordinary form. There can be no doubt that the right to buy a mileage book containing 500 or 1,000 coupons at precisely the same rate charged for an ordinary ticket, and thus to pay in advance for more transportation than one requires at the time, is at best only a theoretical privilege; so that to grant the present application would actually amount to a repeal of the law by this Commission. Such authority is quite beyond its power. The repeal of a statute is a legislative act—quite as much as the determination of its constitutionality is a judicial one. The legislature has never been chary about passing laws. After twenty successive legislatures have failed to embrace their respective opportunities to repeal the mileage book law, which in the meantime has been on several occasions either expressly re-enacted or impliedly approved, I think we may fairly consider that the law-making power of this state has intended this mileage book requirement to stand, rather

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than assume that the legislature has, by implication, delegated to the Public Service Commission authority to repeal it.

Here, then, we have a mandatory statute which has been upon the books for a generation. Its obvious intent is to afford the traveling public an absolute right to purchase mileage books at not to exceed 2 cents per mile from any railroad corporation in this state whose lines exceed 100 miles in length, provided such railroad is authorized by law to charge at the rate of 3 cents per mile as a maximum, and actually does charge more than 2 cents per mile for its ordinary tickets. This requirement became a law twelve years before the Public Service Commission was created, and three years after the latter event, during a general codification of the statutes, it was expressly re-enacted. The legislature has never repealed it, has never manifested intent to repeal it, has never authorized the Public Service Commission to repeal it. Its language is clear and explicit, and its requirement that mileage books at not to exceed a specific price shall be sold by certain railroads—of which the court of last resort has decided that this petitioner is one (Parish v. Ulster & D. R. Co. 192 N. Y. 353, 85 N. E. 153)—is absolutely without qualification or reserve. In the teeth of these facts, which have remained unchallenged for twenty years, this Commission is now asked to legalize the sale of a mileage form of "reduced fare" ticket at the maximum rate allowed by law for the ordinary form of ticket. Any such authority in the Commission must be found, if at all, in other statutory provisions which either, expressly or by plain implication, empower the Commission to either disregard § 60 of the railroad law, or for the time being suspend its operation.

I am aware of only three provisions of the Public Service Commissions law upon which legislative intent as to this question may be predicated. These provisions are found in §§ 26, 33, and 49 of that law.

Section 26 of the Public Service Commissions law, which relates generally to "just and reasonable charges for transportation of persons and property," provides that—

"All charges made or demanded by any such corporation, person, or common carrier for the transportation of passengers or property, or for any service rendered or to be rendered in

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connection therewith, as defined in § 2 of this chapter, shall be just and reasonable, and not more than allowed by law or by order of the Commission having jurisdiction and made as authorized by this chapter. Every unjust or unreasonable charge made or demanded for any such service or transportation of passengers or property, or in connection therewith, or in excess of that allowed by law or by order of the Commission, is prohibited."

Surely no stress can be laid upon this language as indicative of any intent by the Legislature that this Commission shall have power to disregard, modify, or suspend the operation of an express statutory requirement which goes contrary to the Commission's idea of just and reasonable rates. Section 26 is in fact only a declaration that the rates for transportation in the state shall be just, reasonable, and lawful. If considered at all in the present discussion, it should be regarded as making against rather than for the proposition that the Commission has power in the premises. It expressly forbids any charge for transportation in excess of that allowed by law, and it is properly to be construed as forbidding also any charge for transportation in excess of such lesser rate than the maximum allowed by law in case such lesser rate shall have been fixed by order of the Commission. This is precisely the situation contemplated by § 49, hereafter considered, which authorizes the Commission under certain circumstances to fix the maximum rates to be charged for transportation of persons or property "notwithstanding that a higher rate, fare, or charge has been heretofore authorized by statute."

While subdivision 4 of § 33 seems to be mainly relied upon as authorizing the Commission to allow an increase in mileage book rates over the statutory maximum fixed by § 60 of the railroad law, I believe such a deduction is unwarranted by the ordinary rules of statutory construction. After prohibiting transportation by common carriers until publication of their respective rate schedules, providing that only rates fixed shall be charged, prohibiting passes, and making elaborate provisions in regard to free carriage and reduced rates in exceptional cases, § 33 concludes with subdivision 4, which reads as follows:

"Nothing in this section or in any other provision of law

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shall be deemed to limit the power of the Commission to require the sale of, and upon investigation prescribe reasonable and just fares as the maximum to be charged for, commutation, school or family commutation, mileage tickets over railroads or street railroads, joint interchangeable mileage tickets, round-trip excursion tickets, or any other form of reduced rate passenger tickets over such railroads or street railroads; provided that all special round-trip excursion tickets, the sale of which is limited to less than thirty days, except round-trip excursion tickets to the state fair and return during the holding thereof, shall be deemed exempt from such regulation by the Commission."

A careful reading of the entire section in the form of its original inclusion in the Public Service Commissions law, and as thereafter variously amended, leads to the inevitable conclusion that subdivision 4 is simply a "saving clause" to certain distinct statutory provisions and requirements entirely dissociated from the question at issue—such saving clause having been inserted without the slightest intent on the part of the legislature of thereby and in itself enlarging or even defining the powers of the Commission elsewhere created and specifically prescribed. But even if subdivision 4, could be properly considered as reflecting such legislative intent, the utmost that could reasonably be urged in that respect is that the paragraph recognizes the right of the Commission to fix the rates which may be charged for any form of reduced rate passenger ticket, such rates, however, to be confined "within lawful limits," to quote the language of the statute upon an analogous subject. (Fixing Rates for Gas and Electricity, § 72 of P. S. C. Law.) Mileage books at 2 cents per mile, or less, are "a form of reduced rate passenger ticket" when the issuing corporation charges more than at the rate of 2 cents per mile for its everyday form of ticket; but mileage books at the maximum rate permitted by law would be a "reduced rate" ticket in form only, and most shadowy form, at that. The average individual would certainly find in such a "reduced rate" ticket rather more form than substance. The fact that the legislature never contemplated the compulsory sale of mileage books except at a reduced rate is manifest in that the statute requires the sale of such books

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only in case the railroad charges as its maximum fare more than 2 cents.

This brings us to a consideration of § 49 of the Public Service Commissions law, where, if at all, and fortified as may be by argument based upon the general intent of that law, may be found authority for the broad proposition that a department created by legislative act may, in its discretion, annul the positive requirements of another legislative act in existence at the time of the creation of such department and then and thereafter unrepealed.

The first paragraph of subdivision 1 of § 49 reads as follows:

"1. Whenever either Commission shall be of opinion, after a hearing had upon its own motion or upon a complaint, that the rates, fares, or charges demanded, exacted, charged, or collected by any common carrier, railroad corporation, or street railroad corporation subject to its jurisdiction for the transportation of persons or property within the state, or that the regulations or practices of such common carrier, railroad corporation, or street railroad corporation affecting such rates are unjust, unreasonable, unjustly discriminatory, or unduly preferential, or in anywise in violation of any provision of law, or that the maximum rates, fares, or charges, chargeable by any such common carrier, railroad, or street railroad corporation are insufficient to yield reasonable compensation for the service rendered, and are unjust and unreasonable, the Commission shall with due regard, among other things, to a reasonable average return upon the value of the property actually used in the public service, and to the necessity of making reservation out of income for surplus and contingencies, determine the just and reasonable rates, fares, and charges to be thereafter observed and in force as the maximum to be charged for the service to be performed, notwithstanding that a higher rate, fare, or charge has been heretofore authorized by statute, and shall fix the same by order to be served upon all common carriers, railroad corporations, or street railroad corporations by whom such rates, fares, and charges are thereafter to be observed."

And so much of the second paragraph of said subdivision 1

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as may be considered germane to the precise point involved reads as follows:

"Whenever either Commission shall be of the opinion, after a hearing had upon its own motion, or upon a complaint, that the rates, fares, or charges demanded, exacted, charged, or collected by any common carrier, railroad corporation, or street railroad corporation subject to its jurisdiction for excursion, school or family commutation, commutation passenger tickets, half fare tickets for the transportation of children under six years of age, or any other form of reduced rate tickets for the transportation of persons within the state, or joint interchangeable mileage tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of 1,000 miles or more within the state, or that the regulations or practices of such common carrier, railroad corporation, or street railroad corporation affecting such rates are unjust, unreasonable, unjustily discriminatory, and unduly perferential, or in anywise in violation of any provision of law, or that the maximum rates, fares, or charges collected or charged for any of such forms of reduced fare passenger transportation tickets by any such common carrier, railroad or street railroad corporation are insufficient to yield reasonable compensation for the service rendered, and are unjust and unreasonable, . . . the Commission shall, with due regard, among other things, to a reasonable average return upon the value of the property actually used in the public service and to the necessity of making reservation out of income for surplus and contingencies, determine the just and reasonable rates, fares, and charges to be thereafter observed and enforced as the maximum to be charged for such mileage, excursion, school or family commutation, commutation, half fare, or any other form of reduced rate tickets for the transportation of persons, or joint interchangeable mileage tickets with special privileges as aforesaid. . . ."

In these two paragraphs are to be found all the power which the legislature has in express terms conferred upon the Commission to fix the rates of and the maximum to be charged by carriers for all sorts of tickets for transportation of persons within this state. Precisely what has been said, then, in defining this power? According to the language used, whenever

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the Commission is of opinion that the rates charged for transportation by any common carrier, or the regulation or practices of such carrier affecting such rates are unjust, unduly preferential, or discriminatory, or in anywise in violation of laws; or that the maximum rates chargeable by such carrier are insufficient to yield a reasonable compensation for the service rendered, the Commission shall, with due regard to a reasonable average return, etc., determine the maximum rates to be thereafter in force. But the sale of mileage at more than 2 cents per mile by a carrier circumstanced as is the petitioner would be in direct "violation of law;" namely, of the mileage book law above quoted. How, then, in view of the language used can it be contended that the legislature intended to empower the Commission to do anything more than to fix rates within the established legal maximum? And if there is any doubt on the subject, is it not dispelled by the qualifying words, that such maximum may be fixed "notwithstanding that a higher rate or charge has been heretofore authorized by statute?" If the legislature intended that the Commission might permit a rate to be raised above the maximum provided by law, and in formulating such power considered it necessary to use an explanatory clause, why did it not use the comprehensive phrase "notwithstanding a different rate" had theretofore been authorized by statute? In short, if the intention was to clothe the Commission with absolute discretion in fixing railroad rates, without regard to existing statutory maximums, why all this pains to explain that lesser rates than such maximum might be compelled, while leaving it unsaid that rates higher than such maximum might similarly be fixed?

So far, therefore, as may be gathered from the express wording of the statute, in a search for the alleged authority of the Commission to permit the sale of mileage books by the applicant carrier at 3 cents per mile, we must as a last resort look to the 2d paragraph of subdivision 1 of § 49 above quoted. The first paragraph of that subdivision having defined the Commission's powers to fix carriers' rates generally, the second paragraph particularizes as to all forms of reduced rate tickets. Careful comparison of the two paragraphs discloses that the wording in respect of such reduced rate tickets is practically

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identical with that used in the former paragraph in reference to fares generally, the words, "in violation of law," appearing in both paragraphs in precisely the same relation. It is true that the explanatory clause in the first paragraph ("notwithstanding that a higher rate," etc.,) is not found in the second paragraph. But that fact is quite inconsequential; having been used in qualification of the general power and with the effect stated above, no contrary inference may properly be drawn from its nonappearance in the particular and lesser proposition. And as already stated, the use of the words, "or in anywise in violation of law," without any other qualification or explanation, leads inevitably to the conclusion that the authority intended to be delegated is restricted to fixing rates within the established legal maximums. In cases where the charged rates prove to be inadequate, unjust, or otherwise improper, the Commission may allow an increase, but not beyond the limit fixed by statute as a maximum; and "notwithstanding" the fact that the carrier is authorized by such statute to charge up to the prescribed maximum, it is nevertheless to be bound by the determination of the Commission for a lesser rate.

This, to our mind, is the obvious intent of the statute, and it is to be particularly observed that this conclusion does not, as has been urged, limit the rate-making functions of the Commission to reducing rates. The power of the Commission to approve an increase in rates as well as to order a decrease is unquestioned, but any such increase may not be in excess of the limit clearly defined by law as a maximum in the particular case. Thus a carrier, like the petitioner, which has been charging 1½ cents for mileage, or at the rate of 2 cents or more per mile for an ordinary ticket, may be authorized to increase such rates respectively to 2 cents and 3 cents per mile.

In support of the foregoing conclusion we are fortunately not without abundant evidence outside of that found in the precise terms of the provisions of the Public Service Commissions law thus far under review. Thus the maximum rate of 3 cents per mile prescribed by § 57 of the railroad law for such carriers as the petitioner is made expressly and in terms "subject to the provisions of the Public Service Commissions law." While no one has thus far ventured to claim that these words of

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limitation imply power in the Commission to permit a carrier to increase its general rates above the maximum fixed by § 57—for example, to allow the petitioner corporation to charge at the rate of 5 or even 10 cents per mile for an ordinary ticket instead of the 3-cent rate prescribed—the excercise of such a power would in its essence not differ in the slightest from that of authorizing the sale of mileage books at more than the statutory maximum therefor. But whether, as we believe, the true construction of the words, "subject to the provisions of the Public Service Commissions law," which qualify the "maximum rates" provisions of § 57, is that the privilege to carriers of charging such maximum rates is subject to the authority of the Commission to require transportation to be furnished at less than such maximum rates, instead of placing these maximum rates also within the discretion of the Commission, there is to be noted the very significant fact that the mileage book law contains no such qualification. Subject to the provisions of the Public Service Commissions law, maximum rates of fare chargeable by common carriers shall be thus and so; but the maximum fare of mileage books shall be 2 cents per mile, absolutely without reference to or hindrance from the Public Service Commissions law. How are we to explain the inclusion of the qualification in the case of § 57 and its absence in the case of § 60? Only upon the theory that the legislature intended the Commission to have no power to repeal, modify, suspend the operation of, or in any way disregard the express requirement of, § 60, that in certain cases the traveling public shall enjoy the privilege of buying mileage books at the rate of not to exceed 2 cents per mile.

We recognize the force of the argument that the public ought not to enjoy a privilege of this sort when a profitable operation of the enterprise is thereby jeopardized. But is not that, under the circumstances, purely a matter between the carriers and the legislature? As it is pointed out in the Purdy Case, 162 N. Y. 42, 48 L.R.A. 669, 56 N. E. 508, the mileage book law imposes no unlawful burden or undue hardship upon the carrier subject to its requirement, for the reason that the latter becomes a corporation with full knowledge of this particular obligation. Acceptance of the privilege to be a corporation of course in-

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volves acceptance of obligations incidentally imposed. In the case of the applicant, which was formed by a consolidation six years before the Public Service Commissions law was enacted, the burden of this mileage book law became as inevitable as the payment of taxes; or as the charter restriction to a 2 cents per mile fare which was imposed upon the [old] New York Central Railroad by its acceptance of such charter. (See ¶ 2 of subdivision 5 of § 57 of the railroad law.)

There is still another provision of law which makes against the argument that the legislature intended to clothe the Commission with full power to raise and lower existing rates without regard to statutory maximums. It is found in §§ 66 and 72 of the Public Service Commissions law. Subdivision 5 of § 66 empowers the Commission to determine and prescribe proper rates and charges for gas and electricity "notwithstanding that a higher rate or charge has heretofore been authorized by statute"—the precise qualification to the authority conferred as to rates of common carriers; while § 72, which prescribes the procedure in such cases, declares that the Commission may "within lawful limits fix the maximum price of gas or electricity not exceeding that fixed by statute." Here, then, in the case of the only other public service corporations besides common carriers which were originally subject to the Public Service Commissions law, we find in even plainer terms the same restriction upon the rate-making power of the Commission, which in a case of increase is limited to any existing maximum created by law. Why should the Commission be accorded greater powers in transportation rate making than in fixing rates for gas and electricity? And if there is no adequate reason for such a distinction, with the necessarily conceded absence of unlimited authority in the case of rates for lighting and power, what becomes of the argument of "legislative intent" in the case of transportation rates? We say, "conceded" absence of authority in the case of lighting and power rates, because it would have been a bold Commission which, in the face of the "80 cent gas law," would have allowed the Consolidated Gas Company to increase its rate to more than the maximum thus fixed by statute.

In further exploration of this alleged "legislative intent" to clothe the Commission with unrestricted power in rate regula-

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tion, we may properly examine the provisions of the statute in reference to regulating the rates of the only other public service corporations covered by the Public Service Commissions law, namely, telephone and telegraph corporations, which were brought within the jurisdiction of this Commission by the amendment of 1910. The right to regulate such rates is found in § 97, which follows substantially the phraseology of the sections governing regulation of rates of carriers and light and power corporations, except that the qualifying clause, "notwithstanding that a higher rate has been heretofore authorized by statute," is omitted. Now one of two inferences may be drawn from the omission of this clause in § 97: First, that its inclusion was deemed unnecessary, either because no statutory rates for telephone service had theretofore been established, or because of the broad provision of the last paragraph of subdivision 2 of the section quoted, that nothing contained therein "shall be construed as giving to the Commission power to make any order, direction, or requirement requiring any telegraph corporation or telephone corporation to perform any act which is in violation of any law of this state." If such is the proper inference, of course no significance whatsoever attaches to the omission of the clause referred to. The other inference is that the clause was omitted for the express reason that in the case of telephone charges the legislature intended that the Commission should have absolute power in regulation. But if such significance should be given to the exclusion of the qualifying clause in the provisions for regulating telephone and telegraph rates, a contrary significance should be given to its inclusion in the provisions which govern the regulation of rates in the other cases.

[2] The only remaining argument seems to be the appeal *ad hominem*. As stated by one of the counsel, "the Public Service Commissions law would be idle legislation if construed to authorize the Commission to inquire and determine whether or not existing rates are too high or inadequate, and with authority to reduce them if found too high, but without power to increase them if considered too low." And, as expressed by another, "if the Commission is vested with power to require a railroad to sell a mileage book for less than 2 cents per mile when it finds that 2 cents per mile is an unreasonable because an excessive

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charge, it ought to have the right to increase the rate above 2 cents per mile when it finds such a rate to be unreasonable because it is too little." These considerations might fairly be addressed to the legislature in support of a proposition to repeal the mileage book law, but they have not part in an argument to establish delegated authority to disregard an express statute. To fix rates is a purely legislative function, the power to exercise which is not to be lightly assumed although actuated by whatsoever lofty motives in the rounding out of an ideal. While it is not to be denied that the legislature has power to delegate such functions, such delegation should be in express terms and not by implication,—or at least by an implication so undeniably manifest as to be the substantial equivalent of express declaration. As for the suggestion so gravely urged, that the Commission "ought to have" the power invoked, it might be considered as to the point if we were discussing the question of what constitutes an ideal regulative law, in the abstract. But the concrete question before us is not what the legislature ought to have done in formulating the Public Service Commissions law, but what it actually has done, and precisely how far it has gone in delegating certain of its law-making functions to a regulative department. In deciding that question, we are not to be controlled by considerations of policy by general propositions in ethics, or by accepted ideals in law making. The scope and meaning of a statute of this kind, if unfortunately lacking in either the science of ideal humanity or that other kind of ethics which Kant terms "pure morals," is not to be delimitated by the precepts of the Sermon on the Mount. There is no rule of statutory construction which directs us to explore the labyrinth of legislative intent by the light of the moral law. There are even people who believe that the legislature has been known to enact laws which really "ought" not to have been made. But howsoever plain such a case may seem, it will be a sorry day for our scheme of government when a department created by the legislature shall assume to construe its statutory powers by abstract propositions of right and wrong as bearing upon a particular legislative act rather than by the ordinary rules of law.

In arriving at our conclusion, we have not overlooked the decision of the Missouri supreme court in State ex rel. Missouri

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Southern R. Co. v. Public Service Commission, 259 Mo. 704, 168 S. W. 1156. That decision is not controlling upon this Commission, and we do not accept its reasoning, although we are in accord with many of its observations as to the propriety and wisdom of intrusting the Public Service Commission with unrestricted power in rate fixing. While not denying that such power might properly be delegated to us by the legislature, we decline to assume an authority which has not been assuredly created and plainly defined.

The application must be denied.

Hodson and Irvine, Commissioners, concur.

Carr and Emmet, Commissioners, dissent.

DISSENTING OPINION.

Emmet, Commissioner: I differ from the conclusions reached by a majority of my associates in regard to this case. It is not conceivable to me that the legislature could have intended to go as far as my associates admit that they went in passing the sections of the Public Service Commissions law hereinafter referred to—that is to say, to the point of giving these Commissions power to order reductions in rates which were unjust and unfair to the traveling public because too high —without at the same time intending to go as far as I assert that they actually went—that is to say, to the point of giving the Commissions power also to permit increases in rates which were unjust and unfair to the railroads because they were too low.

I do not think that the construction which has been placed upon our powers by the three Commissioners whose views have prevailed accords with the obvious spirit and intention of the legislature and Governor Hughes when in 1907 they inaugurated the policy of governmental regulation of public utilities in New York state—setting up a new system of regulation at the hands of Public Service Commissions vested with comprehensive powers as an alternative, on the one hand, to the inexpert and bungling legislative control of former years; and, on the other hand, to out-and-out governmental ownership and operation of our public utilities. The so-called Hughes law of 1907, which, with slight changes, is the law under which we are acting

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to-day, was a courageous and comprehensive effort by earnest men to deal with a great and complex problem in a spirit of absolute fairness to all the interests involved. It would have been wholly inconsistent with this purpose for Governor Hughes and the legislature to have consciously and intentionally procured the enactment of such a law regulating the issue and price of mileage tickets as my associates, other than Mr. Carr, conceive our present law to be. If my associates are right in their view, we now have upon our statute books precisely the kind of law which the framers of our present regulatory system were obviously doing their very best to get away from. That is to say, we have a law which, in dealing with the delicate problem of railroad rates, permits of no really discriminating exercise of judgment by the Commissions, but instead perpetuates all the old evils of clumsy and ill-considered legislative domination—this in relation to the question which of all others connected with the business of railroading most requires expert handling if it is to be settled with any degree of fairness or justice. We have a law which only takes one side of a complicated problem into account, and only aims at giving relief to one of the classes of people interested in the proper solution of this problem. If it was really the intention of the legislature and Governor Hughes to give us such a law as my associates seem to think the present law is, then it was apparently their intention that these Commissions should really be very much the sort of public bodies that certain demagogues have always said that they ought to be—bodies organized not primarily for the purpose of dispensing evenhanded justice as between the corporations and the people, but organized primarily to give an odor of sanctity and a color of right to repressive attacks upon private capital and enterprise engaged in the public utility field. That is what the old slapdash legislation, which my associates say is still controlling in the matter of mileage rates, for the most part aimed at doing, and that is the kind of public body which this Commission most certainly would be if we were really vested with such grotesquely one-sided powers as it is here claimed we have—powers which while adequate to give unlimited relief to one side in a rate controversy are so inadequate when applied to the rights of the

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other party that they cannot by any possibility, in cases like the present one, lead to anything but a failure of justice.

That is practically where the views of my associates seem to leave us. If they are right, there must be a failure of justice in the present case; and gloss it over as we please, our status as a public body would be about as I have just described it. Now, do the law and the facts of the present case require that we shall reach a decision involving conclusions so damaging as these would be, not only to the virtue of our present regulatory system, but to the motives and intentions of those who framed the present law?

As I have already said, I do not think they do. I cannot reconcile myself to the idea that it is our duty to read into the law any such intention upon the part of its framers. The actual words of the statutes which, with the circumstances surrounding their enactment, are controlling in the matter, would have to be a good deal more ambiguous than they really are before I could, with any easy conscience, accept such a theory of their meaning. Until otherwise advised by a court of competent jurisdiction, I shall take the present law to mean what my understanding of the conditions attending its passage leads me to feel sure that Governor Hughes and the legislature intended it to mean: namely, that this Commission has absolute power, subject of course to court review, to approve of an increase in mileage rates above the 2 cent maximum established by law in 1895, if it believes, after taking proof upon the question, that present rates are too low to produce a reasonable return upon property invested in the public service.

I think I am correct in saying that, upon the merits of the application alone—leaving out the jurisdictional question entirely—none of my associates would hesitate to join in an order permitting the Ulster & Delaware Railroad Company to raise its present rates for transportation upon mileage tickets to 3 cents a mile. It has been shown that the road is running behind and needs a larger revenue, and that there is justification for the belief that the proposed increase in mileage rates would assist materially in producing this larger revenue. The railroad is not asking here for leave to charge a higher rate than the old 3 cent maximum for single-trip transportation established

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a long time ago by the legislature. It is merely asking that it shall, for the present, be permitted to charge this maximum for transportation upon mileage tickets as well as upon single-trip tickets. People are not compelled to buy mileage books. Mileage tickets, it is true, are spoken of in the law as belonging to a class of "reduced rate" tickets, but I do not understand that this use of the expression "reduced rate" as a descriptive term means that, as a matter of principle, mileage book transportation must necessarily be cheaper than single-trip ticket transportation. Ordinarily it is cheaper, I admit, but there are conveniences other than cheapness attaching to the possession of a mileage book. As a matter of fact, my understanding is that mileage book transportation on the New York Central Railroad practically corresponds in price (for reasons which need not be entered into here) to single-trip ticket transportation. Notwithstanding this fact, many people find it on the whole worth while to carry mileage books on the New York Central although there is no noticeable financial inducement for them so to do. That would be the situation here if the present application were granted. The old 3 cent maximum rate, fixed by the legislature in the days before Public Service Commissions had yet been dreamed of, would still stand. The only difference would be that the class of travelers who have the ready money to buy a large number of tickets all at once would not for a time enjoy the special privilege they now have of doing this at a reduced rate. This privilege would temporarily be taken away from them upon what seems to me—and as I understand it would also seem to my associates if it were not for the jurisdictional question which troubles them—to be the good and sufficient ground that its enjoyment under existing conditions prevents the railroad company from earning a large enough average return upon the value of its property to pay a reasonable return to its stockholders, and at the same time make proper reservations out of its income for surplus and contingencies.

Now, as I have said, I think that one of the chief reasons for the creation of the Public Service Commissions was to enable this whole rate situation to be handled in such a way as to insure, at all times and in all cases, a just and impartial exercise of such powers as the state claims to have over the rates charged

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by privately owned public utility corporations. The keynote of the whole scheme was completeness in the jurisdiction of the Commissions over whatever regulatory functions were intrusted to them at all. It was intended that the legislature should not concern itself further with ratemaking questions. It was intended that the Commissions should, in the interest of careful and scientific handling, deal with this subject as the sole representatives of the state of New York. I do not mean to say, of course, that when the law was passed the legislature consciously and permanently devested itself of all rights to intervene, in the future, in rate-making matters. It at least indicated, however, a pretty plain intention not to exercise this right again until the newly created regulatory machinery had been fully tested. It is quite true of course that some of our late legislatures have not felt themselves bound by this self-denying ordinance, because several times since then they have passed arbitrary rate bills; but the unwisdom of such interference with the Commissions in rate matters has been so generally recognized as to have practically defeated the purpose of the attempted legislation. It has been almost as though we have had in this state since the passage of the Public Service Commissions law a constitutional inhibition against further rate legislation, because governors of both parties have, one after another, vetoed these rate bills upon the sole ground that, regardless of their merits, they dealt with a matter which the Public Service Commissions were created to handle, and that so long as the Commissions existed, with their present powers over rates, it was fundamentally wrong that their potential usefulness should be interfered with and nullified in this manner. In other words, since the creation of the Public Service Commissions the attitude of all chief executives toward legislative activity in rate questions has been that legislation of this kind constituted plain interference with one of the most important functions of the Commissions,—for the expert performance of which they were, in fact, largely created,—and this, as I have said, has occurred notwithstanding the fact that there is as yet no constitutional provision to that effect in New York state. I mention all this as bearing upon the question of what was obviously intended, as to the completeness of the juris-

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diction granted to the Commissions over rate problems, when the Public Service Commissions law was passed.

Now, the language employed in the Public Service Commissions' law to carry this intention into effect, while not perhaps as explicit as it might be, seems to me to answer the purpose fairly well. In § 26 of the law, dealing with the question of public utility rates generally, it is prescribed that these shall be "just and reasonable," and that they shall be as provided "by law or by order of the Commissions." Dealing more particularly with mileage book rates on railroads, § 33, subdivision 4, provides in part as follows:

"Nothing in this section or in any other provision of law shall be deemed to limit the power of the Commission to require the sale of, and upon investigation prescribe reasonable and just fares as the maximum to be charged for, commutation, school or family commutation, mileage tickets over railroads or street railroads, joint interchangeable mileage tickets, round trip excursion tickets, or any other form of reduced rate passenger tickets over such railroad or street railroads. . . ."

Then after explicitly laying down in § 49 the principle that in fixing rates to be charged on railroads and street railroads the Commission should take into account the right of the owners of these properties to receive "a reasonable average return upon the value of the property actually used in the public service and the necessity of making reservation out of income for surplus and contingencies," and after giving the Commissions the right to fix such rates, the law goes on to say—

"Whenever either Commission shall be of the opinion, after a hearing had upon its own motion or upon a complaint . . . that the maximum rates, fares, or charges collected or charged for any of such forms of reduced fare passenger transportation tickets by any such common carrier, railroad, or street railroad corporation are insufficient to yield reasonable compensation for the service rendered, and are unjust and unreasonable . . . the Commission shall, with due regard, among other things, to a reasonable average return upon the value of the property actually used in the public service and to the necessity of making reservation out of income for surplus and contingencies, determine the just and reasonable rates, fares, and charges to be there-

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after observed and enforced as the maximum to be charged for such mileage, excursion, school or family commutation, commutation, half fare or any other form of reduced rate tickets for the transportation of persons . . . and shall determine and prescribe the reasonable and just rates, fares, and charges to be thereafter observed and enforced as the maximum to be charged for any of such form of ticket or tickets for the transportation of persons within the state. . . ."

And finally, § 127 of the Public Service Commissions law, after specifying portions of certain old laws which are repealed by the new law, goes on to employ this very explicit and comprehensive language: "All other acts and parts of acts otherwise in conflict with this act are hereby repealed." (I am informed that there are sixty-four chapters of the Consolidated Laws, but that with the single exception of the penal law none contain a similar provision. And the admirable lawyer who is my informant upon this point goes on to ask, "Why, unless to make doubly sure that in case of any conflict between the powers vested in the Public Service Commissions and existing law those powers might be vindicated?")

These, then, are the provisions of our Public Service Commissions law which give us what authority we have over rate questions like the one under consideration. I submit that they accomplish fairly well the purpose which I have argued that the legislature and Governor Hughes had in mind when they created these Commissions. Taken together, they indicate several things. They indicate, in the first place, a general intention to be quite fair to the railroads as well as to the traveling public in rate matters,—an intention which would of course be entirely nullified by such a construction as my associates, other than Mr. Carr, have placed upon the law. They indicate, secondly, in my opinion, a specific intention that the rates on mileage tickets shall be fixed by the Commissions according to the equities of each particular situation, no matter whether this shall result in raising or lowering rates in any given case. Saratoga Springs v. Saratoga Gas, E. L. & P. Co. 191 N. Y. 123, 143, 144, 18 L.R.A.(N.S.) 713, 83 N. E. 693, 14 Ann. Cas. 606. Thirdly, they indicate an intention to repeal all laws which are inconsistent with these purposes. My associates, however, point

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to § 60 of the railroad law, which was on our books for many years before the creation of the Public Service Commissions, and which, after the old legislative fashion, arbitrarily establishes the rate of 2 cents a mile for mileage ticket transportation upon roads like the Ulster and Delaware. It seems that this provision, along with nearly all the rest of the old railroad law, was re-enacted at the time the Public Service Commissions law was passed. The chapter numbers would even indicate that the re-enactment of the old railroad law immediately followed the enactment of the new Public Service Commissions law. Technically, this was a necessary step for the legislature to take in putting the new order of things established by the passage of the Public Service Commissions law into operation. But, relying upon the sequence of chapter numbers, a majority of my associates seem to think that the re-enactment of the railroad law leaves § 60 of that statute not subject to the repeal provision in the Public Service Commissions law, and that it indicates an intention upon the part of the legislature to undo at once what it had just accomplished in the way of substituting careful, expert handling of technical rate problems for the outworn legislative method of dealing with these. They therefore propound the theory that such powers as these Commissions have over rates must have been given to them solely for the purpose of compelling reductions in rates, from time to time, below the maximum established by old § 60 of the railroad law, and that we have no right to consent to the raising of rates above the maximum then fixed, no matter for what good cause.

Now as a legal technicality this may be all very well, but as a common-sense proposition it does not seem to me to stand the test of close scrutiny. To suppose that the legislature intended, in re-enacting the Public Service Commissions law, to prevent the Public Service Commissions from doing even-handed justice in rate cases, is to suppose that as soon as it had enacted the Public Service Commissions law it repented of its action and sought to undo what was perhaps the chief achievement of that law. This is rather a violent assumption. Yet it is what must have been intended if the theory of my associates is correct. Of course no such thing was intended. The purpose of the re-enactment of the railroad law was to help out and fortify the funda-

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mental idea of the Public Service Commissions law, not to destroy it. If § 60 was left in the re-enacted law intentionally, it was left there merely as a convenient general way of handling the mileage rate situation until the Commissions should, upon proper evidence in actual cases, apply their new powers to an intelligent treatment of these cases. As re-enacted, § 60 could not have been intended to have any larger scope than that. It was intended to be binding except as and when the Commissions, in particular cases, should decide otherwise. I suppose it was assumed by the legislature that the passage of the Public Service Commissions law simultaneously with the re-enactment of § 60 of the old railroad law would make it plain to the public, to the railroads, and to the Commissions that this was what was meant. Otherwise § 60 would of course have been repealed, precisely as every other antique provision of law that seemed to be inconsistent with the new arrangement was repealed. It is not impossible that the legislature thought they had repealed it, and that its re-enactment was one of those oversights which often happen when bulky statutes come up for repassage *en bloc*. Our legislatures—whose real intentions, as every lawyer knows, are frequently not expressed as scientifically as they might be—make mistakes of this kind every winter; and whenever such a thing happens in connection with our Public Service Commissions law, it has always seemed to me to be the duty of the Commissions, at least until instructed otherwise by the courts, not to permit obvious errors or slouchy law making of this sort to limit the usefulness of the Commissions in matters where it was intended that they should be very useful indeed. Even if we admit (which personally I do not) that the presence of § 60 in the re-enacted railroad law leaves the actual intentions of the legislature with regard to the matter we are discussing a little in doubt, we must not forget that this kind of obscurity as to precise legislative intent is a very common fault, running through the whole structure of our statute law. Particularly is this true where the law upon some one point has to be spelled out of scattered provisions in different statutes. In almost every case of this kind a certain amount of conflicting, and sometimes irreconcilable, language can be discovered by industrious and technical minded lawyers. In such cases it seems to me that this Com-

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mission, more than most governmental bodies (because all through the law runs the plain intimation that legal technicalities should not govern our decisions), ought to shun, as it would shun a plague, every construction of a doubtful statute that seems to be at variance with the broader presumptions, the more fundamental purposes, of the Public Service Commissions law. My associates other than Mr. Carr, in the construction they have placed upon the statutory provisions we are considering, do not seem to me to have approached the problem from precisely that standpoint. They would have reached a different conclusion, I think, if they had.

Lest the argument I have been making may seem to some like an attempt upon the part of a public official to claim powers which he does not rightfully possess, I ought perhaps add that I am not partial to the idea that governmental officials should ordinarily seek to read larger powers for themselves into the law than are explicitly stated there. The tendency should be in the other direction. Public officers should be moderate and conservative in the construction which they place upon the laws granting them power and authority. But here, it seems, the whole underlying spirit and purpose of the Public Service Commissions law is at stake—imperilled by what I can only regard as a trivial technicality. In such a situation the Commissions themselves should certainly, whatever the courts may do afterward, construe doubtful points in the law in accordance with what they know to be the underlying spirit and purpose of the law. I feel that we are not, as a Commission, doing our full duty when, through an excess of lawyer-like caution, we invoke narrow and technical principles of statutory construction as a reason for declining to perform an act of simple justice to a railroad corporation, merely because the wording of the law is at worst slightly ambiguous, although the spirit of the law is plain.

DISSENTING OPINION.

Carr, Commissioner: I am unable to concur in the views of a majority of my associates in holding that this Commission has no power to grant an increase in the mileage book rates of the Ulster & Delaware Railroad Company because of the provisions of § 60 of the railroad law. If that section is controlling, then

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I believe all of my associates are agreed that a distinct hardship will be worked upon the company.

The fact that the courts of this state have not dealt with the precise situation presented in this case prevents us from having the benefit of a judicial determination as a guide to our action. The courts of the state of Missouri, however, have dealt with a similar situation, and reference will be made to it hereinafter.

The mileage book law of this state was first enacted in 1895 (chapter 1027, Laws of 1895). Amendments have been made from time to time, and are covered by chapter 835 of the Laws of 1896; chapter 484 of the Laws of 1897; and chapter 577 of the Laws of 1898. The law as originally enacted required every railroad corporation operating a road in the state of New York, the lines of which were more than 100 miles in length, and which was authorized to charge a maximum fare of more than 2 cents per mile, and not exceeding 3 cents per mile, to sell thousand mile mileage tickets for use on such lines at a rate not exceeding 2 cents per mile. The subsequent amendments to the law set forth certain other provisions which are not material to this case.

When the Public Service Commissions law was enacted in 1907 this mileage book law was not repealed. When chapter 481 of the Laws of 1910 was enacted, known as the railroad law and constituting chapter 49 of the Consolidated Laws, this so-called mileage book act became § 60 of article 3 of the railroad law, and it was incorporated as such § 60 in the same form in which it had existed since the enactment of chapter 577 of the Laws of 1898. The fact that this mileage book act was incorporated in the railroad law in 1910 does not mean that it is to be considered as having been enacted at that time. Chapter 596 of the Laws of 1909 provides that in such a case the act is to be considered as of the time when it was originally enacted. There was also enacted in 1910, chap. 480 of the Laws of 1910, known as the Public Service Commissions law and constituting chapter 48 of the Consolidated Laws. At that time, § 49 of article 3 of the Public Service Commissions law gave the Commissions authority to regulate the rates of the railroads in certain respects. It was evidently not intended to give the Commissions the power to increase rates under that section because of the following words which appear in subdivision 1, "notwithstanding

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that a higher rate, fare, or charge has been heretofore authorized by statute."

In 1911 the legislature enacted chapter 546 of the Laws of the State of New York, which, among other things, amended subdivision 4 of § 33 of article 2, and subdivision 1 of § 49 of article 3 of the Public Service Commissions law. Chapter 546 was apparently enacted for two purposes: First, to enlarge the provisions of subdivisions 3 and 4 of § 33 so as to cover the issuance of any reduced rate passenger tickets; and, second, to amend subdivision 1 of § 49 so as to give the Commission power to determine the just and reasonable rates, fares, and charges to be observed and enforced as the maximum to be charged for mileage, excursion, commutation, and other forms of reduced rate tickets for the transportation of persons. Nothing was said at the time chapter 546 was enacted as to any intent to repeal § 60 of the railroad law, so that to all intents and purposes that section is still in force and effect and apparently for a specific purpose. At first glance it might seem as though the purpose in not repealing § 60 was to make it controlling as to the issuance of mileage books, yet it seems to me that upon proper consideration of other statutory provisions it will be apparent that this was not the legislative intent. While under § 49 of the Public Service Commissions law as it exists there may be some question as to whether or not the Commission would have power to increase the mileage book rates provided by § 60 of the railroad law, yet when consideration is given to subdivision 4 of § 33 of the Public Service Commissions law, I am of the opinion that the Commission has full power and jurisdiction to increase such mileage book rates if, upon investigation, it should be of the opinion that such rates ought to be increased.

The mileage book act so-called has been repeatedly construed by the courts of this state, and most of the cases have arisen out of actions brought to recover the penalty provided by the law. Trolan v. New York C. & H. R. R. Co. 31 App. Div. 320, 52 N. Y. Supp. 257, which was reported in June, 1898, was an action brought to recover a penalty for the refusal of the defendant to sell a mileage book to the plaintiff, and the judgment for the plaintiff was affirmed. In this case the court held that the

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N. Y. C. & H. R. R. Co. was subject to the provisions of the mileage book act.

In February, 1898, the case of Corcoran v. New York C. & H. R. R. Co. 25 App. Div. 479, 49 N. Y. Supp. 701, was decided, and this was also an action for the penalty for refusal to accept a mileage book for transportation. The plaintiff recovered judgment which was affirmed, and this decision was reported in 164 N. Y. 587, 58 N. E. 1092.

After these cases were decided, and in the year 1899, the case of Lake Shore & M. S. R. Co. v. Smith, 173 U. S. 684, 43 L. ed. 858, 19 Sup. Ct. Rep. 565, was decided. This arose out of an action for the penalty for the refusal of the railway company to sell a mileage book to Smith in accordance with the provisions of an act of the state of Michigan passed in 1890. This mileage book act under which the cause of action accrued was similar to the New York act, chapter 1027 of the Laws of 1895. The railway company was incorporated before the law went into effect, and the court held that the act was unconstitutional because it was in violation of that portion of the Constitution which forbids the taking of property without due process of law. The court also held that the act also provided for unjustifiable discrimination in favor of a few persons traveling over the road and permitting them to travel at a lower price than other patrons of the road.

In Beardsley v. New York, L. E. & W. R. Co. 162 N. Y. 230, 56 N. E. 488, decided in 1900, the court decided that the mileage book act, chapter 1027 of the Laws of 1895 of the State of New York, was unconstitutional as to corporations existing at the time of the enactment of the law, because the statute was an illegal invasion of the property rights of the railroad corporation; and this decision was based on the case decided in the United States Supreme Court in 1899.

In Purdy v. Erie R. Co. 162 N. Y. 42, 48 L.R.A. 669, 56 N. E. 508, which was also decided in 1900, the court of appeals decided that the mileage book law, chapter 1027 of the Laws of 1895, was constitutional as to railroad corporations which were incorporated in New York after the law took effect. The same decision was arrived at in Minor v. Erie R. Co. 171 N. Y. 566,

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64 N. E. 454; and in Horton v. Erie R. Co. 86 App. Div. 379, 83 N. Y. Supp. 733.

In later years, the respondent in the present case also contested this mileage book law, claiming that it was unconstitutional, and the case is entitled Parish v. Ulster & D. R. Co. 192 N. Y. 353, 85 N. E. 153, and was decided in the year 1908. This was an action arising out of the ejectment of Mrs. Parish, who presented a mileage book made out in the name of her husband, Mr. H. M. Parish, and the court of appeals decided that the company was subject to the mileage book act so-called because the road was more than 100 miles in length and was incorporated in 1901, which was subsequent to the time that the mileage book act was created.

In my opinion, § 49, read in connection with subdivision 4 of § 33 of the Public Service Commissions law, gives the Commission the power to increase mileage book rates notwithstanding the provisions of § 60 of the railroad law, and that this latter section was left unrepealed for the specific purpose of providing that the mileage book rates therein set forth should be the prevailing mileage book rates for new railroad corporations subject to the act in the first instance, but that such rates should nevertheless be subject to an increase by the Public Service Commission if after investigation it should determine that the rates ought to be increased. The evident intent of the legislature of the state of New York in all legislation which has been enacted since the Public Service Commissions law was created has been to give the Commissions full power to finally determine what are just and reasonable rates, and to raise or lower the existing rates. Unless that assumption is correct, it will be seen that the authority of the Commission would be seriously curtailed, and it would be powerless to give the necessary relief to the corporations subject to its jurisdiction upon a proper showing. The trend of the times being to give the Commissions full power to regulate the corporations under their jurisdiction, and this includes the fixing of fair and reasonable rates, I cannot agree that the legislature of the great state of New York has withheld from this Commission the power to fix a mileage rate for a railroad corporation in this state which will aid it in performing the service which is required by the public. No question can be

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raised as to the right of the Public Service Commissions to revise all rates other than mileage book rates, because this power is specifically given by the Public Service Commissions law; and it is therefore fair to assume that it was the intention of the legislature to delegate to the Commissions the power to regulate all rates of every kind and description on the railroads, including mileage book rates, having in mind the application of § 60 as herein set forth, except where restricted by charter provisions. The courts of the state have held decisively that the Commissions have the power to regulate rates. See People ex rel. Delaware & H. Co. v. Public Service Commission, 2d Dist. 140 App. Div. 839, 125 N. Y. Supp. 1000; People ex rel. New York, N. H. & H. R. R. Co. v. Public Service Commission, 2d Dist. 159 App. Div. 531, 145 N. Y. Supp. 503; People ex rel. New York C. & H. R. R. Co. v. Public Service Commission, 2d Dist. 159 App. Div. 546, 145 N. Y. Supp. 513. The last two cases have also been affirmed by the court of appeals.

The Missouri case which I have hereinbefore referred to arose out of the refusal of the Public Service Commission of the state of Missouri to consider the application of the Missouri Southern Railroad Company for permission to increase its rates over the maximum rates prescribed by statute, on the ground that it had no authority to grant such relief in view of the provisions of the statute of the state of Missouri providing for a maximum of 2 cents per mile for passengers. The case is reported in vol. 259 of Missouri Reports, p. 704, the opinion in the case having been written by Chief Justice Lamm. The Public Utilities act of the state of Missouri is substantially the same as the Public Service Commissions' law of the state of New York, and the section relating to rates was copied verbatim from our law. The court decided that it was the intention of the legislature of the state of Missouri to give full power to the Commission to consider the question of rates; and that inasmuch as it had the power to require proper service to the public, it of necessity also had power to regulate the income and the fixed charges of the corporations which must be considered at the same time. It also decided that the law gave the Commission full power to fix and enforce rates either above or below the rates fixed by statute, when the existing rates do not provide a reasonable average return on the value of

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the property actually used in the public service. The decision also dealt with the question of whether or not the Commission had judicial or legislative powers, and decided that it did not; but that on the other hand, as an administrative arm of the government, while it had no power to repeal a statute or declare the same unconstitutional, it did have power, after investigation as required by law, to exercise the legislative function of fixing railroad rates either by increasing or decreasing them.

I have, therefore, come to the conclusion that the power vested in the Public Service Commissions of the state of New York is equal in every respect to that which the highest court of the state of Missouri says is vested in the Public Service Commission of that state, and that our Commission should grant the application of the railroad company and permit an increase of the mileage book rates to such an amount as will in the opinion of the Commission afford the relief so much needed by the railroad company.

OKLAHOMA CORPORATION COMMISSION.

ARDMORE OIL PRODUCERS' ASSOCIATION

v.

W. & F. OIL COMPANY et al.

[Order No. 920; Cause No. 2287.]

Constitutional law — Impairment of contract — Restriction on production of oil.

1. The right of an individual producer of oil to extract from a common source of supply sufficient oil to supply pipe lines, refineries, and markets, which he has established and secured at great expense, and to supply contracts to furnish a certain amount of oil within a given time, is subject to the power of the legislature to provide that where the full production from a common source of supply can only be obtained by conditions constituting waste, a producer may take only such proportion of oil that may be produced from the common source, without waste, as the production of his wells bears to the total production of the common source, and to empower the Commission to make rules and regulations for the prevention of waste and the unfair or inequitable taking of oil.

Oil — Ownership — Common source of supply.

2. An individual producer in an oil field where the source of sup-

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ply is common to all has no absolute property in the oil beneath the surface until it is raised and reduced to possession and capable of being removed or transported at the will of the owner.

Oil — Production — Rules and regulations.

3. The Oklahoma Commission established rules and regulations restricting the production of oil from a common source of supply on the theory that it should be produced and preserved in such a manner as not to be wasted, so that the public, the users and consumers, might receive the full benefit therefrom, rather than in such quantities in excess of market demands, as would result in the early destruction of the oil field, although reducing the price of the oil.

Oil — Common source of supply — Rights of producers.

4. Producers of oil in Oklahoma from a common source of supply, who do not produce their percentage of the possible capacity of their wells that is necessary to make up the daily market demand, cannot prevent other producers from supplying such demand.

Oil — Production — Limitation.

5. Producers of oil in Oklahoma from a common source of supply are prohibited from taking more oil than is necessary to supply the daily market demand, the taking to be regulated by ascertaining such demand and the potential production, and by permitting each operator to produce only such a per cent of the possible production of each well as is necessary to make up upon the whole the daily market demand, the daily production to be the average of a period of thirty days.

[June 5, 1915.]

COMPLAINT praying for an order promulgating rules and regulations for the prevention of waste of crude oil and natural gas in the Healdton field, for the taking of oil from the oil-bearing sands, to determine the *pro rata* production of oil to be taken from the common pool by the individual operators, and for an order prohibiting the storage of oil. Rules and regulations established, storage prohibited in earthen reservoirs, but permitted in wood or steel reservoirs upon conditions.

Appearances: Chas. VonWeise, J. W. Herrald, and Wirt Franklin for the complainant; C. C. Herndon and C. J. Wrightsman for the defendant W. & F. Oil Company; L. S. Dolman for the 1911 and Bayou Company; Geo. C. Greer for the Corsicana Petroleum Company; Hubert L. Mason for the Ardmore Refining Company.

Henshaw, Commissioner: The complaint in this case was filed under the provisions of house bill No. 168, "An Act Defining and Prohibiting Waste of Crude Oil and Petroleum," etc.,

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otherwise known as the oil conservation act, and alleges in substance:

(1) That crude oil is being taken from the oil sands of the Healdton field in excess of the market demands.

(2) That oil is being produced in said field in such manner and under such conditions as to constitute waste, and is being produced in excess of marketing facilities.

(3) That certain producers are taking from the oil-bearing sands of said field a greater proportion of crude oil than that to which they are entitled under the provisions of § 4 of the act.

(4) That oil produced in excess of the market demands is being placed in steel storage and in earthen storage, resulting in waste and irreparable damage and injury.

(5) That specific acts are being committed whereby certain properties are producing more than their *pro rata* part of oil, thereby unduly draining adjoining properties; that some of the oil so produced is being placed in earthen storage, and some in steel storage.

The petitioners pray that after due hearing the Commission promulgate rules and regulations for the prevention of waste of crude oil and natural gas in the Healdton field; that it promulgate rules and regulations for the taking of oil from the oil-bearing sands in said field, and prescribe rules and regulations to determine the *pro rata* production of crude oil to be taken from the common pool by the individual operators.

The petitioners further pray that the Commission make an order prohibiting the storing of crude oil or petroleum produced from the Healdton field, and for such other relief as may seem meet and proper.

After due publication, as provided by law, the complaint was heard by the Commission at Ardmore on April 9, 1915. No specific answers were filed, but the representatives of the various producers appeared, and evidence was introduced describing the conditions of the field. The case was then set for oral argument at Oklahoma City on April 23d. All producers were permitted to file suggestions or briefs without formality, discussing the conditions, and suggesting rules and regulations which, in the judgment of the individual producers or parties interested, would aid

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the Commission in prescribing practical rules and regulations that would conform to the law.

The facts according to the evidence are substantially as follows: That the potential production of the Healdton field is 70,000 barrels per day; that the pipe line facilities for transporting the oil from the field to the primary markets are (1) Magnolia Pipe Line, capacity about 15,000 barrels per day, running from Healdton field to the Fort Worth and other refineries of the Magnolia Petroleum Company and to the Gulf Port; (2) the Ardmore Refining Company's pipe line, capacity about 4,000 barrels per day, running from the field to the refinery at Ardmore; (3) the Thelma pipe line, capacity about 2,000 barrels per day, running from the field to the town of Ringling on the Oklahoma, New Mexico, & Pacific Railway. The total pipe line facilities in the field are now approximately 21,000 barrels. The purchasers of oil as shown by the evidence are the Magnolia Company, from six to eight thousand barrels daily; the Ardmore Refining Company, from one to two thousand barrels daily; the Thelma Pipe Line running a small amount to Ringling for rail transportation.

Within sixty days prior to the hearing, there had been from one hundred fifty to two hundred thousand barrels of oil taken from the field under what is known as "common carrier" runs to the Pierce–Fordyce Refinery at Fort Worth. The evidence further disclosed that certain properties had been producing oil greatly in excess of the *pro rata* amount based on the average daily consumption; that the 150,000 barrels of oil which had been run as "common carrier" runs were produced by one property of comparatively small acreage. The Commission has ascertained outside of the record that at one time more than 600,000 barrels of oil had been placed in earthen storage; that at the time of the hearing, most of this oil had been removed. It was shown that oil had been recently pumped from wells and placed in earthen storage. (We are informed, out of the record, that as a result of the heavy rains during the month of May much of this earthen storage was carried off by the floods, and that it greatly injured the crops and vegetation on farm lands, and also the water supply, particularly stock water.)

The evidence discloses that there is no unreasonable amount of gas being wasted.

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At the hearing and during the argument the producers and attorneys representing various interests had different opinions as to what rules or regulations could or should be made under the law that would be practicable and equitable; however, they did agree that the storing of oil in earthen reservoirs should be prohibited.

It was contended by Mr. VonWeise, one of the attorneys representing petitioners, in substance, that the storage of crude oil in wooden or steel tanks should be limited to such an amount as would meet the daily demands of the transporting and marketing facilities of the field for a period of ten days; that if for any reason any producer might not care to avail himself of his daily market *pro rata,* he should be permitted to store same in wooden or steel reservoirs; that in the event any producer or producers by their own efforts secured a market for their production, they should be permitted to supply that market without being prorated amongst other producers, provided that this amount should be charged against them in their *pro rata* runs to the Magnolia or other common purchasers; that all producers should be required to report to the conservation officer the amount of oil by them taken daily from the sands, and that no producer should be permitted to take more than his *pro rata* part from the common source of supply, and that interference with the fulfilment of private contracts should be avoided if possible.

Mr. Dolman, representing the Bayou and 1911 companies asked that certain producers, specifically mentioned, be prohibited from producing any more oil from the sand until such time as other producers have produced an equal amount, based upon the potential production of the respective wells.

Mr. Franklin, president of the Ardmore Oil Producers' Association, made recommendations substantially the same as those of Mr. VonWeise.

Mr. Skillern filed without making specific recommendations, recommending, however, that some action should be taken to protect the small producers.

Mr. Hernstadt urges that the Commission make rules and regulations strictly to carry out the provisions of the law.

Mr. Clark, of McMann Oil Company, suggests that earthen storage should be prevented; that rules for the conserving of gas

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during drilling should be prescribed, using the "mudding in" or some other practicable process to prevent the escape of gas; that the restriction of production to market demands is a difficult problem.

Mr. Lincoln McKinley urges that an order should be made immediately stopping all productions in excess of immediate market demands, but providing that a small amount of oil may be stored.

Mr. W. D. Teague, royalty owner, urges that the operators be allowed to build storage and continue their drilling in order to protect the royalty owners.

Mr. C. D. Goddard, of the Humble Oil Company, urges that the production of oil be prorated alike as to all producers.

Mr. L. F. Lee, of the 1911 Oil & Gas Company; Mr. G. M. Rushing, of the 1914 Oil & Gas Company, and Mr. Fred J. Harle, of the Climax Oil & Gas Company,—urge that storage oil be limited to the probable demands for thirty days, and that no exceptions be made in favor of producers having contracts.

Mr. J. M. Critchlow, of the Dundee, Samoset, and Alma Oil Companies, recommends no earthen storage; steel storage only when producers have a market demand for oil; that when one producer obtains a market he should be permitted to fill his contract, regardless of the effect on the adjoining property.

Mr. Byron Drew, representing the Bayou and 1911 companies, recommends that the law be carried out to the letter and that production be strictly prorated among producers.

Mr. C. J. Wrightsman, of the W. & F. Oil Company, suggests that earthen storage should be prohibited; that steel storage by producers not affiliated with a pipe line is a commercial necessity; that the law interpreted in the spirit of its enactment would require the Commission to act when conditions are monopolized and the market is restricted from fair, reasonable, and competitive opportunity; that that is the condition in the Healdton field at present; that under the present restricted market the outside purchasers of oil should be made common purchasers; that any purchaser can be made a common purchaser.

Mr. George Greer, general attorney for the Corsicana Petroleum Company, filed a brief discussing the law and the practical application thereof. With the exceptions of rules preventing actual and unreasonable waste, his conclusions are that a part of

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the law is unconstitutional, and, if strictly construed, other parts are impracticable.

Sections 1, 3, and 4 of house bill No. 168 are as follows:

"Section 1. That the production of crude oil or petroleum in the state of Oklahoma, in such manner and under such conditions as constitute waste, is hereby prohibited."

"Section 3. That the term 'waste' as used herein, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste, and waste incident to the production of oil or petroleum in excess of transportation or marketing facilities or reasonable market demands. The Corporation Commission shall have the power to make rules and regulations for the prevention of such wastes, and for the protection of all fresh water strata, and oil and gas-bearing strata, encountered in any well drilled for oil."

"Section 4. That whenever the full production from any common source of supply of crude oil or petroleum in this state can only be obtained under conditions constituting waste, as herein defined, then any person, firm, or corporation having the right to drill into and produce oil from any such common source of supply may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm, or corporation bears to the total production of such common source of supply. The Corporation Commission is authorized to so regulate the taking of crude oil or petroleum from any or all such common sources of supply, within the state of Oklahoma, as to prevent the inequitable or unfair taking, from a common source of supply, of such crude oil or petroleum, by any person, firm, or corporation, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another."

Section 5 authorizes the Commission to ascertain the potential production of the respective wells, and to appoint an agent for that and other purposes.

Section 6 authorizes the attorney general or other parties in interest to file proceedings before the Commission, and prescribes the procedure.

Section 2 is not involved in the complaint. Section 3 defines waste, in addition to the ordinary and accepted meaning of the

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term "waste," to be (1) economic waste, (2) underground waste, (3) surface waste, and (4) waste incident to the production of crude oil in excess of the transportation or marketing facilities or reasonable market demands.

The Commission finds from the evidence that there is actual waste which results from the storing of oil in earthen tanks; also actual waste in a less degree in the storing of oil in wooden and steel tanks in excess of a reasonable amount to supply the market demands.

The Commission further finds that if the total potential production of the Healdton field were produced each day, the same would be in excess of transportation or marketing facilities or reasonable market demands; that the taking from the oil sands the total potential production, or seventy or more thousand barrels per day, under conditions as exist in the Healdton field, would constitute waste.

The Commission further finds that the oil in the Healdton field is in one common stratum of oil sand, and constitutes one common source of supply; that the present market demands of the Healdton field are not in excess of 15,000 barrels per day; that the maximum transportation facilities will not exceed 25,000 barrels per day; that the market demands vary from day to day; that under the present market demands there is less than 25 per cent of the total possible production of the oil being marketed.

The manner in which the proportion of this amount may be taken from the sands by each producer is prescribed by § 4 as follows:

"That whenever the full production from any common source of supply of crude oil or petroleum in this state can only be obtained under conditions constituting waste as herein defined, then any person, firm, or corporation having the right to drill into and produce oil from any such common source of supply may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm, or corporation bears to the total production of such common source of supply."

The Commission is authorized to prescribe rules and regulations for the taking of oil under certain conditions so as to prevent inequitable or unfair operations by the producers. The amount

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to be taken is fixed by law. The manner of prorating is fixed by the law. The only duty left to the Commission, after ascertaining the fact that producing the maximum potential capacity of the field each day results in waste, is to ascertain from day to day and from time to time the *pro rata* part of the oil that each producer may take from the ground without constituting waste as defined by the law. The law by its own terms prevents the producer from taking oil in excess of his *pro rata* share as defined therein.

[1, 2] It is insisted by some that the enforcement of this law (the conservation act) is impracticable, and by others that the law is unconstitutional. The sections of the law which are sought to be enforced by this proceeding do nothing more than make it possible for each oil producer to obtain his *pro rata* part of the oil which he would get if there were market facilities or a market demand for the entire production.

That the state may prevent the unreasonable waste in the production of crude petroleum, and regulate the taking from the oil sand, has been definitely settled by the Supreme Court of the United States.

The conservation law under which we are now acting provides that oil shall not be produced under such conditions as constitute waste.

In Ohio Oil Co. v. Indiana, 177 U. S. 190, page 202, 44 L. ed. 729, 736, 20 Sup. Ct. Rep. 576, 20 Mor. Min. Rep. 466, Justice White said:

"Does the peculiar character of the substances, oil and gas, which are here involved, the manner in which they are held in their natural reservoirs, the method by which and the time when they may be reduced to actual possession, or become the property of a particular person, cause them to be exceptions to the general principles applicable to other mineral deposits, and hence subject them to different rules? True it is that oil and gas, like other minerals, are situated beneath the surface of the earth, but except for this one point of similarity in many other respects they greatly differ. They have no fixed situs under a particular portion of the earth's surface within the area where they obtain. They have the power as it were of self-transmission. No one owner of the surface of the earth, within the area beneath which the gas and oil move, can exercise his right to extract from the

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common reservoir, in which the supply is held, without, to an extent, diminishing the source of supply as to which all other owners of the surface must exercise their rights. The waste by one owner caused by reckless enjoyment of his right of striking the reservoir, at once, therefore, operates upon the other surface owners. Besides, whilst oil and gas are different in character, they are yet one, because they are unitedly held in the place of deposit."

The court then reviewed the cases of Brown v. Vandergrift, 80 Pa. 147; Hague v. Wheeler, 157 Pa. 324, 22 L.R.A. 141, 37 Am. St. Rep. 736, 27 Atl. 714; Jones v. Forest Oil Co. 194 Pa. 379, 48 L.R.A. 748, 44 Atl. 1074, 20 Mor. Min. Rep. 350; People's Gas Co. v. Tyner, 131 Ind. 277, 16 L.R.A. 443, 31 Am. St. Rep. 433, 31 N. E. 59, 17 Mor. Min. Rep. 481, and many other cases.

It is judicially ascertained that oil has no fixed situs, and likewise determined that the respective and relative rights of the common or individual owners may be regulated and protected by law. The relation of ownership of oil beneath the surface is somewhat analogous to the ownership of the individuals that compose the entire public in the wild game of the country, with the distinction that the individual owners of the surface cannot be entirely prohibited from taking oil from the oil sands, whereas the state by law can prevent the public from taking wild game, or may say in what numbers and under what conditions and in what seasons it may be reduced to possession. Wild game has no fixed situs, and may voluntarily move from place to place without limitation, whereas oil may move from place to place in a limited area by reason of pressure, gravitation, or suction.

In discussing this phase of the case, Justice White on page 209, says:

"In things *ferœ naturæ* all are endowed with the power of seeking to reduce a portion of the public property to the domain of private ownership by reducing them to possession. In the case of natural gas and oil no such right exists in the public. It is vested only in the owners in fee of the surface of the earth within the area of the gas field. This difference points at once to the distinction between the power which the lawmaker may exercise as to the two. In the one, as the public are the owners, everyone may

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be absolutely prevented from seeking to reduce to possession. . . . On the other hand, as to gas and oil the surface proprietors within the gas field all have the right to reduce to possession the gas and oil beneath. They could not be absolutely deprived of this right which belongs to them without a taking of private property. But there is a coequal right in them all to take from a common source of supply the two substances which in the nature of things are united, though separate. It follows from the essence of their right and from the situation of the things as to which it can be exerted, that the use by one of his power to seek to convert a part of the common fund to actual possession may result in an undue proportion being attributed to one of the possessors of the right to the detriment of the others, or by waste by one or more to the annihilation of the rights of the remainder. Hence it is that the legislative power, from the peculiar nature of the right and the objects upon which it is to be exerted, can be manifested for the purpose of protecting all the collective owners, by securing a just distribution to arise from the enjoyment, by them, of their privilege to reduce to possession, and to reach the like end by preventing waste. This necessarily implied legislative authority is borne out by the analogy suggested by things *ferœ naturæ,* which it is unquestioned the legislature has the authority to forbid all from taking, in order to protect them from undue destruction, so that the right of the common owners, the public, to reduce to possession, may be ultimately efficaciously enjoyed. Viewed, then, as a statute to protect or to prevent the waste of the common property of the surface owners, the law of the state of Indiana which is here attacked because it is asserted that it devested private property without due compensation, in substance, is a statute protecting private property and preventing it from being taken by one of the common owners without regard to the enjoyment of the others."

Sections 3 and 4 of this act come clearly within the language of Chief Justice White in that the object is to protect the common owners who have a right to take oil from the common source of supply, that those who may have pipe lines or markets may not totally destroy the rights of others who may not be so fortunately situated.

It may be urged that some of the producers in the Healdton

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field have gone to great expense in establishing pipe lines and refineries and securing markets, and that certain parties have contracted to furnish a certain amount of oil within a given time, and the state has no authority to pass laws to interfere with such enterprise.

It may be urged that the Corsicana Petroleum Company and the Magnolia Pipe Line Company have built pipe lines, built a refinery at Fort Worth and a refinery at Beaumont and Corsicana, and extensive marketing facilities throughout the state of Texas, Oklahoma, and other states; that they have the right to extract from the common source of supply a sufficient amount of crude oil at Healdton to supply all of their market demands and the contracts entered into. Let us assume that these companies control 80 per cent of the total market output of this field. They would have the other producers absolutely at their mercy.

A refinery has been established at Ardmore with pipe-line facilities from the Healdton field. While this refinery will probably not use more than 2,000 barrels per day, yet in principle is it different from that of the Magnolia? A private individual in south Texas may go to an individual producer and buy a half million barrels and at the same time the adjoining property owners that would be immediately drained by extracting this amount of oil from the common source of supply could not sell a barrel of oil. Must the field be turned over entirely to the Magnolia Petroleum Company, the other pipe line companies, and the individual that makes his private contract, and the state be powerless to protect a citizen who has an equal right to take oil from the field?

Justice White says there is no difference in oil and gas, inasmuch as they are found in the same strata, and both capable of involuntary transmission under the surface of the earth. Hence, marketing and taking gas from the common source of supply would furnish the best example to illustrate the equitable and legal principle involved. In Oklahoma all the large cities are piped for the distribution of gas. The distributing plant is connected with pipe lines reaching the gas field. These particular pipe lines reach all the available markets. The state of Oklahoma passed a law requiring those who had the market for gas and the pipe lines to purchase gas in a given field from all parties who

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had gas to offer ratably. Some of the gas companies are now attacking this law in the Federal court. The state, by law, requires those who may be drilling for oil who strike gas to prevent the gas from escaping into the air. Near Okmulgee a party at great expense in drilling for oil struck a 40,000,000 cubic foot gas well which he offered to sell to the gas companies or pipe lines at their own price, and they refused to buy it, but complained to the county attorney, who forced the owner of the gas well to cap same to prevent the gas from escaping. The pipe lines are now taking this gas through another well in the same field, and the owner of the capped well must sit idly by with his investment and see the gas as extracted from under his land. If the state cannot protect the common owners of property, the Supreme Court of the United States has yet to find that provision of our Constitution which will permit one owner of a common pool of oil or gas to destroy and exploit the rights of the others.

The more recent decisions of the Supreme Court reiterate the principles announced by Justice White above quoted. In the case of Lindsley v. Natural Carbonic Gas Co. 220 U. S. 61, 55 L. ed. 369, 31 Sup. Ct. Rep. 337, Ann. Cas. 1912C, 160, the court said:

"It does not take from any surface owner the right to tap the underground rock and to draw from the common supply, but consistently with the continued existence of that right so regulates its exercise as reasonably to conserve the interests of all who possess it. That the state consistently with due process of law may do this is a necessary conclusion from the decision in the case cited." (Referring to Ohio Oil Co. v. Indiana, 177 U. S. 190, 44 L. ed. 729, 20 Sup. Ct. Rep. 576, 20 Mor. Min. Rep. 466.)

The last case which has been called to our attention is West v. Kansas Natural Gas Co. 221 U. S. 261, 55 L. ed. 728, 35 L.R.A.(N.S.) 1193, 31 Sup. Ct. Rep. 564, the Supreme Court said: "And, we repeat, again, there is no question in the case of the regulating power of the state over the natural gas within its borders. The appellees conclude the power—."

It is contended that where contracts were made prior to the enactment of the law or prior to the findings of fact herein by the

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Commission as to the conditions and waste in the Healdton field, that such contracts are binding, and that it is beyond the power of the state to impose such restrictions upon one of the parties thereto that the same could not be complied with if he should be limited in the amount of oil that he may take from the common source of supply.

No individual producer in an oil field where the source of supply is common has an absolute property in the oil beneath the surface until it is raised and reduced to possession and capable of being removed or transported at the will of the owner. When the same is abstracted from the sand and placed in tanks it has the same legal status as property of the owner as wheat in a granary, and the state would have no authority to regulate by law the manner or under what conditions the oil should be disposed of by the owner, unless by reason of quantity or other conditions it became a public nuisance.

Justice White in Ohio Oil Co. v. Indiana, 177 U. S. 205, 44 L. ed. 737, 20 Sup. Ct. Rep. 576, 20 Mor. Min. Rep. 466, quoted from Jones v. Forest Oil Co. 194 Pa. 379, 48 L.R.A. 748, 44 Atl. 1074, 20 Mor. Min. Rep. 350, as follows: "From these cases we conclude that the property of the owner of land in oil and gas is not absolute until it is actually in his grasp and brought to the surface."

On page 207, Justice White says:

"Reviewing its own [Indiana] previous adjudications which we have cited and those of the supreme court of the state of Pennsylvania, to which we have also referred, it was decided that the owners of the surface of the land within the gas field, whilst they had the exclusive right on their land to sink wells for the purpose of extracting the oil and gas, had no right of property therein until by the actual drawing of the oil and gas to the surface of the earth they had reduced these substances to physical possession. It was further held that in consequence of the nature of the deposits, of their transmissibility, of their independence, of the rights of all and of the public at large, the state could lawfully exercise the power to regulate the right of the surface owners among themselves to seek to obtain possession and to prevent the waste of the products in which all the surface owners within the area wherein the gas and oil were deposited, as well as the public,

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had an interest, because in the preservation of these substances the well-being and prosperity of the entire community was largely involved. And it was upon the opinion announced in that case that the court rested its decree in the case now under review."

Again on page 209, Justice White says:

"It being true as to both animals, *ferœ naturæ* and gas and oil, therefore, that whilst the right to appropriate and become the owner exists, proprietorship does not take being until the particular subjects of the right become property by being reduced to actual possession."

An individual may contract to sell 1,000 quail. At the time he made the contract there may be no law preventing him from acquiring that number. In the meantime a law may be passed limiting the number of quail which one person may acquire. An individual may sell a certain amount of oil. If he has this oil in storage, there is no law preventing him from filling the contract. If he has not the oil in storage, he takes his chances under the law of extracting the required amount from the common source of supply under such limitation as may be imposed by the state for the purpose of guarantying to all producers that their rights to take their proportion of the oil from the field shall be protected. This principle is fundamental, and is supported by authorities.

The authority of the state to protect coequal rights of individuals whose rights may depend upon drawing a *pro rata* share of a natural commodity from a common source of supply is not new. More than eighteen years ago the supreme court of Colorado had a similar subject under consideration, wherein certain farmers in an irrigated district had to depend upon water from one common source of supply.[1] One of the parties had made a contract that he should have a certain amount of water. Afterwards a law was passed requiring the water to be distributed *pro rata,* according to the ascertained necessities of the individuals.

In the case of White v. Farmers' Highline Canal & Reservoir Co. 22 Colo. 191, 31 L. R. A. 829, 43 Pac. 1028, the court said: "That part of this contract which attempts to give each consumer the right to determine the amount of water to which he is entitled with permission to take the same regardless of the

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rights of other consumers or of the ditch company was declared void by the court of appeals."

The court further said:

"The right claimed by the consumer is a right, the exercise of which is positively prohibited by the statute of this state. . . . The 3d section provides that it shall be the duty of those owning or controlling such canals or ditches to appoint a superintendent whose duty it shall be to measure the water from such canal or ditch through the outlet to those entitled thereto according to his or her *pro rata* share. . . . Where there are a large number of consumers taking water from the same ditch, the excessive use by some may absolutely deprive others of water at times when its application to the thirsty soil is absolutely necessary to prevent the total failure of growing crops. So, also, as between different ditches, if one, in case of scarcity, takes from a public stream water to which it is not entitled, it must be at the expense of others."

The court further said:

"It is said, however, that as the contract under which the defendant claims in this case was executed prior to the passage of the act of 1887, the parties to this action are not bound by that statute; . . . this argument has been advanced in many cases, but, we believe, never successfully, where, as here, it is in opposition to the police power of the state."

The court then cites and reviews: Northwestern Fertilizing Co. v. Hyde Park, 97 U. S. 659, 24 L. ed. 1036; Buffalo East Side R. Co. v. Buffalo Street R. Co. 111 N. Y. 132, 2 L.R.A. 384, 19 N. E. 63; Bertholf v. O'Reilly, 74 N. Y. 509, 30 Am. Rep. 323; People v. Budd, 117 N. Y. 1, 5 L.R.A. 559, 15 Am. St. Rep. 460, 22 N. E. 670; Richardson v. Boston, 24 How. 188, 16 L. ed. 625; Tucker v. Ferguson, 22 Wall. 527, 22 L. ed. 805.

The court finally holding: "So our act of 1887 governing the distribution of water by ditch companies carrying water for hire is binding upon the parties to this action, notwithstanding the agreement of March 22, 1873."

The Commission in this case will predicate its order upon the authority vested in the Commission by §§ 1, 3, 4, and 5 of the law known as the conservation act, and particularly that part regulating the equitable taking of oil among the operators.

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The producers in this case are complaining. It should not be overlooked, however, that the public also has an interest in the prevention of waste of oil. It may be insisted that the wells in the Healdton field may be operated at their maximum capacity, and the oil placed in steel storage. Such storage in the Healdton field with one year's insurance costs approximately 25 cents per barrel. The maximum market price for oil in that field is now 30 cents per barrel. Even though there were no waste of oil in steel tankage by evaporation, this practice would border on economic waste as between the producers. Should one producer or several producers force the other producers to install steel storage when the oil placed therein is worth but little more than the cost of storage, and practically cause the producer to lose all of his rights in the proper production of oil from the common source of supply? We believe this would be economic waste.

We should not overlook the fact that the record in this case shows that the total production of the field is now 70,000 barrels per day. (And from sources outside of the record, it has since been increased to eighty or possibly one hundred thousand barrels per day, and it is claimed by the producers could be increased to 150,000 barrels within a very short time.)

It is shown from the record that the evaporation of oil in steel storage is from 10 to 25 per cent of the value of the oil the first year. We do not mean in quantity. The lighter and more valuable oils escape. Hence if we consider the minimum amount fixed by the witnesses as waste of oil in steel storage to be 10 per cent of the value and 80,000 barrels of oil were stored each day for one year in the Healdton field, there would be a loss of 8,000 barrels per day. Would it not be a spectacle for the public to assemble each morning and witness the destruction of 8,000 barrels of a commodity that is absolutely necessary for the prosperity and business of the country,—a commodity which, once being destroyed, can never be replaced by any artificial means known to science? We may raise an excessive agricultural crop such as cotton. It may be destroyed, yet another crop can be produced It is not so with oil.

[3] It may be claimed that it is to the interest of the public to produce oil in such extravagant and wasteful manner that the price thereof may be reduced to 10 cents per barrel. We wit-

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nessed an appalling example of this at Beaumont, Texas, where a great field of oil was discovered and recklessly exploited and operated, and the rights of individual owners were destroyed. Millions of barrels of this oil were sold as low as 3 cents per barrel. It was put upon the market at a price as cheap as one could pump and transport water from the Gulf of Mexico. Railroads installed oil burners; the public used the oil because it was cheap. Within a year's time it was destroyed. Thereupon oil burners were torn from industrial plants at great expense; whereas, if the oil at Beaumont had been produced so as to prevent waste, the oil consumers who had to go back to coal within a short time could have continued to burn oil at reasonable prices for several years. Thereafter gasolene was again placed on the market at 25 cents per gallon and continued at that price for several years.

We are now exploiting the greatest oil fields of the world,—Cushing and Healdton. This oil should be produced so as to prevent waste,—not necessarily to influence the price of crude oil, but it should be produced and preserved in such manner as not to be destroyed, so that the public, the users and consumers, may receive the full benefits therefrom, and in order that reasonable prices for the product may be enjoyed by the public at large for a number of years.

When the Healdton and Cushing fields are destroyed this may mark the passing of the last great oil fields in the mid-continent. Immediately gasolene and fuel oil would advance to the old prices of 25 cents per gallon for gasolene and more than $1 per barrel for fuel oil.

The legislature had in mind mainly two objects when §§ 1, 3, 4, and 5 of this law were passed: First, to regulate the production of oil by the operators so that the weaker or small producer would be guaranteed his *pro rata* part of the oil; and, second, that the oil should be produced and preserved in such manner that the public would enjoy the full benefits thereof at reasonable prices, not only for the present time, but for years to come.

It is insisted that more or less confusion will necessarily arise because of different producers selling oil individually. By the co-operation of the producers § 4 of the act can be carried out,

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and the oil prorated and all contracts filled with but little, if any, difficulty. It would be unreasonable to prevent oil to be taken from the sand because some producer may refuse to participate in the market, thereby causing other properties in the field to be shut down. When a producer is given a reasonable opportunity to deliver his *pro rata* part of the oil being taken from the sand, and he fails to embrace that opportunity, he should thereafter be estopped from asserting his right to prevent others in the common source of supply taking oil in the meantime.

[4] The operation of this law, to a large extent, will have the effect of making all purchasers of oil common purchasers to the extent of giving all parties who had not otherwise run their *pro rata* share of oil an opportunity to participate in the fulfilment of this contract. Otherwise the party making the contract would be limiting his ability to fulfil the same to the extent of his *pro rata* of oil being taken from the field. It is immaterial whether the oil is run by a common purchaser, common carrier, or otherwise. The total amount taken from the field must be produced by the different producers, or an opportunity given the different producers to participate in the production of the amount so taken.

[5] Wherefore the Commission considers, orders, and adjudges that, in order to prevent waste and to regulate the taking of oil from the common source of supply, and to prevent the inequitable and unfair taking of oil from the common source of supply in the Healdton field, the following rules and regulations are hereby made and established:

(1) The practice, plan, or device of placing or holding crude oil in earthern reservoirs (sometimes called pond storage) heretofore in use in the Healdton field, is hereby discontinued and prohibited.

(2) The use of wooden or steel storage is permitted under the limitations, restrictions, and qualifications hereinafter found.

(3) No operator (person, firm, or corporation, having the right to drill into and produce oil from the common source of supply) shall take from the potential production of the Healdton field more than his fair and equitable proportion thereof, and in order that the potential production of said field may be determined for the purpose of establishing a basis for the fair and equitable taking of oil from the common source, it is ordered that

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A. L. Walker, heretofore appointed as agent for the Commission, or his successor in office, make a gauge of each oil well in said field, and as its rules and regulations for the taking or making of such gauge, the Commission authorizes its agent to use and uniformally apply the method and plan now recognized and in common use.

(4) That upon ascertaining the potential production of the field, the agent of the Commission shall thereupon ascertain the transportation or market facilities, and ascertain the amount of oil necessary to meet the daily market demands.

(5) That the daily actual production of the oil field shall be restricted and confined to such a quantity as is necessary to supply the probable daily market demand with the exception hereinafter provided; that is to say, the raising of the oil from the sand or the production from the common source of supply shall be done by the operators in said field only to the extent of the amount necessary to meet the ascertained daily market demands, and under the conditions set forth in the rules and regulations of the Commission.

(6) The capacity or potential production of each well in said field shall be ascertained in the manner and by the means above outlined, and thereupon the owner in the operation thereof shall be restricted in raising oil from underground to the surface to the following extent; that is to say, the agent of the Commission in said field shall, in accordance with these rules, ascertain the ratio of the daily market demand to the potential production, and then the actual production shall be limited to the market demand, and in supplying the market demand the operators shall be permitted to produce ratably, that is to say, only such a per cent of the possible production of each well as is necessary to make up upon the whole the daily market demand.

(7) In order to guard against unforeseen casualties and contingencies, and to the end that the market may not at any time be deprived of an adequate supply, the use of wooden or steel storage permitted as aforesaid is hereby authorized for the storage of the whole or potential production of any well or number of wells on any one lease or property for a period of ten days, but in running the oil so produced, it shall be run according to the fair and equitable *pro rata* of the operator according to the

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plan hereby established; or, in other words, if an operator chooses to accumulate his whole possible production for a period of ten days, then upon the sale of the same he shall be wholly precluded and prohibited from raising any other oil from the sand to the surface until he is due another run upon the *pro rata* basis.

(8) The Commission in avoidance of any controversy pertinent to the legal status of common carrier and common purchaser runs applies the rules and regulations wholly, and therefore both directly and indirectly, to the production of oil, and not to the marketing of the same, or rather to the raising of the oil from the sands to the surface, and hereby authorizes its agent, in the regulation of fair and equitable production as aforesaid, to prohibit the raising of oil from the sands to the surface, except such as can be marketed under these rules and regulations.

(9) The storage of oil by any common purchaser or purchasers bought ratably in open market bona fide to be held as stock under the usual custom of the trade for the purpose of refining or for sale to the consumer is not prohibited by the rules hereinbefore prescribed.

(10) These rules shall not be interpreted so as to require the oil to be produced ratably each day, but the amount produced from any one well within a period of thirty days shall not exceed the *pro rata* permissible daily production.

This order shall be in full force and effect on and after its publication as required by law.

Corporation Commission. George A. Henshaw, Commissioner, W. D. Humphrey, Commissioner.

Chairman Love did not participate in the consideration or promulgation of this order on account of sickness.

Note.—After the handing down of the above order, the agent of the Commission requested instructions regarding the production and sale of oil in excess of the producers' *pro rata* share of the oil deposit, both prior and subsequent to the date of the oil conservation act. Mr. Commissioner Humphrey stated that operators with oil above ground might sell such supply ratably to common purchasers, up to date of the law or since that time, provided the production accumulated prior thereto; and if any producer had taken more than his ratable proportion or just and equal share from the common source of supply since the date of the law, that the agent should so adjust matters as to equalize the production ratably since that date P.U.R.1915E.

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to the end that the common owners of the common supply might enjoy ratably their common rights. Mr. Commissioner Henshaw concurred in the instructions, with the suggestion "that in cases where the common purchaser had not taken the full *pro rata* share of a producer prior to the enactment of the law, because such producer had sold oil to others than a common purchaser and had in fact taken his full *pro rata* share from the common source of supply, such common purchaser may perform his duty under the law as it existed at that time, provided the producer has oil in storage from which the deficiency in his *pro rata* runs to the common purchaser may be made; but that such producer should not take oil at this time from the common source of supply to make up this deficiency."

WEST VIRGINIA PUBLIC SERVICE COMMISSION.

JAMES SMITH et al.

v.

HOWARD NUNNELLY et al.

[Case No. 387; Formal Complaint No. 48.]

CHARLESTON INTERURBAN RAILROAD COMPANY

v.

CLYDE SMITH et al.

[Case No. 388; Formal Complaint No. 49.]

Automobiles — Jitneys — Common carriers — Public service business — Jurisdiction of Commission.

1. Jitneys operated in the same portion of a city in which street cars are operated and in more remote parts where there are no car lines, maintaining regular routes, schedules, and service, carrying indiscriminately all persons desiring to ride, and charging a uniform fare, are common carriers of persons, and are also engaged in a public service business, within the operation of a statute extending the jurisdiction of the Commission over common carriers of passengers and those engaged in any public service business, irrespective of whether the operators are a corporation, firm, or individual.

Constitutional law — Delegation of powers — Jitneys.

2. The legislature has the power to grant to the Public Service Commission the right to regulate and control the operation of jitneys.

Automobiles — Jitneys — Regulation — Power of Commission.

3. Under the Public Service Commission act, which requires every person, firm, or corporation engaged in a public service business to maintain adequate and suitable facilities, and to give reasonable, safe,

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and sufficient service without discrimination, and empowers the Commission to enforce such facilities and service, the Commission has the right to regulate and control the operation of jitneys which are common carriers of persons and engaged in a public service business.

Automobiles — Jitneys — Exclusive regulation by local authorities.

4. The West Virginia Commission deemed it unwise or unnecessary to establish rules and regulations for the operation of jitneys in a city whose charter power in such respect was much broader than that of the Commission and had been exercised by the enactment of a comprehensive ordinance, and which city could supervise and control jitneys more effectively than the Commission.

Discrimination — Jitneys — Negroes.

5. A complaint against operators of jitneys for refusing to carry negroes was dismissed without prejudice upon their having abated the discrimination.

[August 19, 1915.]

PETITION of James Smith et al. charging defendants with unlawful discrimination in the carriage of passengers in the operation of jitney busses, etc., and asking for relief; dismissed without prejudice.

PETITION of Charleston Interurban Railroad Company, a corporation, charging defendants with unlawful discrimination, etc., and asking supervision and regulation of jitney bus business in city of Charleston; dismissed without prejudice.

In re jurisdiction, rules, and regulations relative to the operation of jitney busses.

Appearances: Herbert Fitzpatrick, Governor W. A. MacCorkle, T. S. Clark, and W. G. MacCorkle, counsel for petitioner Charleston Interurban Railroad Company; Geo. W. McClintic and C. R. Kimbrough, counsel for petitioners James Smith et al.; W. W. Werts, counsel for defendants; John Marshall, attorney for Parkersburg, Marietta Interurban Railway Company; Smith Hood, superintendent M. V. T. Company; Geo. I. Neal, attorney for Ohio Valley Electric Railway Company; Fred Paul Crosscup, president Charleston-Dunbar Traction Company; S. B. Avis, attorney for Public Service Commission.

Morgan, Commissioner: James Smith, Bernard Clare, and Alfred Graves, complainants, filed their joint petition on the 6th day of July, 1915, against Howard Nunnelly, A. Farrell, Wm. Hanshaw, and the persons owning and operating on the streets of Charleston, West Virginia, motor busses bearing auto-

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mobile licenses of the state of West Virginia Nos. 9882, 5290, 3642, 1430, 5715, 909, 5010, 1884, 1335, 5285, 5050, 2167, 5903, 1462, 853, and 665, defendants, alleging that said complainants were citizens and residents of the city of Charleston, and that they were negroes; that the defendants (the names of the persons operating the busses bearing the above numbers being to said complainants unknown) were engaged in the business of common carriers in the city of Charleston transporting for hire upon, along, and over the streets and highways of the said city by means of automobiles or motor busses, commonly known as jitney busses, and that said defendants and each of them had violated the Constitution and the acts and laws of the state of West Virginia by declining and refusing to receive and carry said complainants as passengers on account of their being members of the colored race; that said refusal on the part of said defendants to receive and carry complainants was an unlawful discrimination, and that said discrimination was unreasonable, unlawful, and unjust, and that the service established and maintained by said defendants was not reasonable, safe, sufficient, just, and fair, and praying that the Commission enter an order commanding said defendants, and each of them, to cease and desist from the violations of the acts and laws referred to in said petition, and for other relief.

On the same day an order was entered requiring the defendants to satisfy said complaint, or make answer thereto within ten days after service on them of a copy of said order.

On the 19th day of July, 1915, the defendants filed their joint answer to said petition, admitting that they were the owners and operators of said motor busses, commonly known as jitney busses, and that they were operating the same upon, along, and over the streets of Charleston, for hire, by transporting persons from one point to another for the sum of 5 cents, and that it might be true that some of the drivers of said jitney busses (through ignorance of the law) had refused to carry persons of the negro race in said vehicles; said defendants alleging in their said answer that they would henceforth comply strictly with the law, and that from the time of filing of said answer and forever afterward they would carry any and all persons, regardless of color or previous conditions of servitude, to any and all points

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within the city of Charleston. Defendants further stated that they did not object to the Commission entering any reasonable order in the case, but denied the jurisdiction of the Commission in the premises.

The Charleston Interurban Railroad Company, a corporation duly created and organized under the laws of the state of West Virginia, on the said 6th day of July, 1915, filed its petition against Clyde Smith and other persons, whose names were alleged to be unknown to said petitioner, engaged in the business of common carriers upon the streets and highways of the city of Charleston, by use of vehicles commonly known as jitney busses, alleging, among other things, that it was carrying on the business of a common carrier by operating a street railroad in the city of Charleston, and other places adjoining and near said city, and that it had expended in the construction, maintenance, and equipment of its said railroad more than $1,000,000; that it paid an annual license tax for the use of the streets of the city $100 per mile of its track; that it was operating its cars in the city of Charleston under a franchise granted by said city to its lessor, the Kanawha Valley Traction Company; that it had provided itself and was equipped with a sufficient number of modern, comfortable cars to afford ample accommodations for the public desiring to travel thereon; that it had in every respect complied with the laws of the state of West Virginia, and with the numerous requirements of its franchise, and discharged its duties and obligations as a common carrier of persons upon and over its lines of street railway; that the defendants were engaged as common carriers of persons, for hire, in and upon the streets and highways of the city, in vehicles known as jitney busses, in competition with petitioner, and that said defendants did not maintain any routes or schedules, and did not furnish a regular service in any part of the city; that they did not pay any license tax to said city, or any compensation for the use of the streets of said city; that they did not run at regular times and on regular routes, but gathered at congested places of traffic where patrons of petitioner assembled to board its cars and sought to induce such patrons to ride in their jitney busses instead of upon cars of petitioner; that the lives of persons upon the streets, and safety of persons riding in the busses, were endangered; that the owners and drivers of

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said vehicles were wholly without responsibility and regulation; that they refused to carry persons of the negro race in their vehicles, upon like terms and conditions that they carried persons of other races; that they were carrying on their business in an unreasonable, unsafe, unfair, and unjust manner to petitioner and to the public, and praying that the Commission would enter an order fixing such lawful and reasonable rates and practices, rules and regulations, governing the business of said defendants as should be proper and just, etc.

On the filing of the foregoing petition an order was entered requiring the defendants to satisfy said complaint, or make answer thereto within ten days after the service of a copy of said order.

On the 19th day of July, 1915, an answer on behalf of all the defendants referred to in the foregoing petition was filed, in which it was admitted that the plaintiff was a duly organized corporation, and was operating its cars in the city of Charleston under a franchise from said city, in the manner set forth in said petition. Said defendants further admitted that they were operating jitney busses upon, along, and over the streets of the city of Charleston for hire, and charging the sum of 5 cents for carrying a passenger to any point of the city; that they were carrying and offering to perform a service similar to that of petitioners, and in addition to carrying passengers to points on the streets of the city touched by the street cars, defendants averred that they carried passengers to the remote parts of the city where the street cars did not run. Defendants denied that they did not maintain any routes or schedule, and did not furnish regular service in any part of the city; denied that they did not pay a license tax to said city for operating their busses; alleged that they paid annually to said city the sum of $5 for each vehicle, also a license tax to the state of West Virginia, and that after the 28th day of July, 1915, they would be compelled to pay to the city an annual license tax of $24 for each vehicle. They denied that they solicited business, but only carried persons on request; further denied that they endangered the lives of their passengers, alleged that only experienced men operated said busses, and that they were operated with great care. Defendants denied that they were conducting an irregular business, without control or regulation, and in such a manner as to most seriously injure petitioner or other persons.

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Defendants averred that they tendered with said answer their schedule of rates, and that they had established and maintained adequate and suitable facilities for carrying on the business as common carriers, and that the service given the public was being performed in a reasonable, safe, sufficient, just, and fair way; denied that they were giving undue and unreasonable preference and advantage to certain localities; denied that they were subjecting certain persons of the negro race to undue, unreasonable prejudice and disadvantage; averred that they were carrying and would continue to carry any and all persons of the negro race that desired to be carried. It was further alleged in said answer that an ordinance had been passed by the city of Charleston, which would become effective on July 28, 1915, requiring all drivers of jitney busses to give bond in the penalty of $2,500 for the faithful and careful operation of said vehicles. Defendants prayed that the prayer of petitioner be denied, and that they be allowed to operate their said vehicles under the ordinance of said city.

On the 6th day of July, 1915, after the filing of the foregoing petitions, the Commission, of its own motion, issued a formal notice of a conference or hearing to be held at the office of the Commission, in the city of Charleston, on the 23d day of July, 1915, for the purpose of considering

"(1) Whether or not the Commission has jurisdiction over persons engaged in the business commonly known as jitney bus business; and

(2) If the Commission has such jurisdiction, what rules and regulations, if any, it should adopt governing such business."

Public notice of said conference or hearing was given through the press. The parties to the foregoing proceedings were notified that the questions arising in said petitions and answers would all be considered and heard together at said conference or hearing; and an opportunity was given to all parties interested in said proceedings, or the questions arising on said notice, to appear and be heard.

A hearing was had on said petitions, answers, and notice (both cases being heard together), at Charleston, on the 23d day of July, 1915, at which time learned and instructive arguments were delivered on the questions under consideration, and since said hearing elaborate briefs have been filed with the Commission.

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No evidence was introduced at said hearing except "an ordinance regulating the operation of motor vehicles (commonly known as jitney busses, etc.)," which was passed by the common council of the city of Charleston on the 28th day of June, 1915, was filed on behalf of the defendants, and, on motion, leave was granted the Charleston Interurban Railroad Company and Clyde Smith et al. to file an agreed stipulation of facts, which was later filed with the Commission.

[1] The first question to be considered and determined is whether this Commission has jurisdiction over the operation of jitney busses in the state. If it has such jurisdiction, it derives same under § 3, chapter 8, Acts of the Legislature 1915, which provides:

"The jurisdiction of the Commission shall extend to and include:

"(a) Common carriers, railroads, street railroads, express companies, sleeping car companies, freight lines, car companies, toll bridges, ferries, and steam and other boats, engaged in the transportation of freight and passengers; . . . (c) All other public service corporations and all persons, associations, corporations, and agencies employed or engaged in any of the businesses hereinbefore enumerated."

Then follows this broad provision:

"The words 'Public Service Commission' used in the act shall include all persons, association of persons, firms, corporations, municipalities, and agencies engaged or employed in any business herein enumerated or in any other public service business whether above enumerated or not, whether incorporated or not."

It will be readily observed that, if the Commission has jurisdiction in these proceedings, it will be because the defendants are engaged in the business of "common carrier," or that of "public service," or both. It matters not whether the business is carried on by a corporation, firm, or individual, the gist of the matter being the kind of service rendered.

It is admitted by the answer of the defendants that they are engaged in performing and offering to perform a service similar to that being performed by the petitioner, the street railroad company, and that in addition to operating in the same portions of the city in which said petitioner operates, said defendants carry

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and transport passengers to remote parts of the city where street cars are not operating, and that they maintain regular routes, schedules, and service, and that they carry indiscriminately any and all persons desiring to ride in said vehicles at the uniform charge of 5 cents.

It is stipulated in the agreement between petitioner, Charleston Interurban Railroad Company, and defendants, Clyde Smith et al., filed in this case, that the jitney busses in the city, engaged in the business as carriers, are consolidated and combined into an association, and that said association controls the jitney bus traffic of the city.

At common law the term "common carrier" did not embrace a carrier of passengers, the term applying to carriers of goods only, and creating the liability of an insurer of the goods so carried. Our statutes nowhere define the term "common carrier." However, the supreme court of the state in Gillingham v. Ohio River R. Co. 35 W. Va. page 588, 14 L.R.A. 798, 29 Am. St. Rep. 827, 14 S. E. 243, defines a common carrier of passengers as one who undertakes, for hire, to carry all persons indifferently who may apply for passage so long as there is room, and there is no legal excuse for refusing.

The Illinois Public Utilities Commission, under "An Act to Provide for the Regulation of Public Utilities," has recently decided that where "the owner of a number of automobiles who advertised in various newspapers and through printed circulars that he is engaged in the business of transporting passengers by motor busses over and along certain designated streets in a city, and has specified in such advertising the routes to be taken by his motor busses, the rate of fare to be charged and a time schedule, and who has held himself out to the public as a common carrier for hire, offering to transport all persons desiring to ride along the routes taken by his motor busses, is a common carrier of persons, and consequently a public utility within the meaning of the Public Utilities act."

And the Georgia Railroad Commission, under an act of the legislature of that state, similar in many respects to our statute, recently held that where a jitney association had its regular advertised routes, schedules of charges, and the service offered and rendered by it was common to all the public, it rendered to

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the public practically the same character of service as that rendered by an electric trolley system, and was therefore a common carrier of persons.

It was contended in that case, as has been suggested in this proceeding, that if the Commission undertook to regulate the jitney it must exercise the same powers as to taxicabs, hacks, drays, and other like minor carriers, but the Commission stated in its opinion in the Georgia case that the hack and dray business was different to that of the jitney association, in that they "Had no definite routes or charges. Practically every service rendered by them is a special service rendered to an individual or individuals . . . The vehicle for the time is exclusively for his use, and, without his consent, no one else can enter it."

Thus, clearly indicating that it was the character of the service rendered that must be looked to in determining the question of regulation.

Wyman on Public Service Corporations, vol. 1, § 187, says: "The latest development in urban service . . . is the taxicab. These, being automobiles, are subject to peculiar regulation in their use of the highways. All the general laws governing the operation of automobiles relate to them, and a special license is often necessary for these who engage in the business for hire. If they ply the streets for hire they are undoubtedly holding themselves out as common carriers of passengers."

Section 160: "The conception of carriage itself involves not only transportation, but control during the transit. To be common carriage this particular business must be upon the basis of public service."

Bouvier's Law Dictionary: "Such as undertake, for hire, to carry all persons indifferently who may apply for passage, so long as there is room and there is no legal excuse for refusing."

Applying the rule as enunciated by the supreme court in the Gillingham Case, and as laid down by Judge Poffenbarger in an able opinion in the case of Ex Parte Dickey, — W. Va. —, L.R.A. —, ante, 93, 85 S. E. 781, in which it was held that (meaning jitney bus operators) were engaged in the common carriage of persons and also in the public service, and the doctrines laid down by the Illinois and Georgia Commissions, and numerous other authorities cited and that might be cited, which we be-

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lieve to be sound in principle, the Commission is of the opinion that the manner in which the jitney busses are operated in the city of Charleston places them in a class with the street cars of said city as common carriers of persons.

It necessarily follows that if they are common carriers of persons they are likewise engaged in a public service business.

It is such a public service that can and should be regulated, and, if so, how?

In the case recently decided by the supreme court of this state, Ex Parte Dickey, heretofore cited, Dickey had been arrested for violating an ordinance passed by the Commissioners of the city of Huntington, limiting the operation of jitney busses, and applied for his discharge on a writ of habeas corpus. In considering the question of the constitutionality of the ordinance, the court, among other things, said: "Under the broad power given by this charter" (meaning the charter granted by the legislature to the city of Huntington) "to grant, refuse, and revoke licenses to hotel keepers and operators of vehicles kept for hire, and to regulate them for the interest and convenience of the inhabitants of the city, the commissioners may do anything respecting these subjects that the legislature itself could do, and as we have shown, that power is almost unlimited."

The court held in that case that the city of Huntington had the "power to prescribe the routes and hours of service of motor vehicles, commonly called 'jitney busses,' . . . and to require from them idemnity against injury to persons and property occasioned by the operation thereof."

[2, 3] If the legislature can vest a municipality with power to regulate and control the operation of vehicles, no reason is perceived why it could not grant similar powers to the Public Service Commission.

Section 4 of the Public Service Commission act provides that "every person, firm, or corporation engaged in a public service business in this state shall establish and maintain adequate and suitable facilities, and shall perform such service in respect thereto as shall be reasonable, safe, and sufficient, and in all respects just and fair. . . ."

Section 5 provides that "the Commission is hereby given the power to investigate all methods and practices of public service

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corporations, and to require them to conform to the laws of the state . . . and change or prohibit any practice, device, or method of service in order to prevent undue discrimination or favoritism as between persons. . . ."

Section 7 provides that "it shall be unlawful for any public service corporation subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular character of traffic or service, in any respect whatsoever, or to subject any particular person, firm, corporation, company, or locality, or any particular character of traffic or service, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." [W. Va. Anno. Code 1913, chap. 150, §§ 639, 640, 642.]

Having ascertained that the manner in which the jitney busses are operating in the city of Charleston stamps them as common carriers of persons, and that they are engaged in a public service business, and that the legislature has the power to grant Commissions and municipalities, and bodies of like character, the right to regulate and control the operation or business of said vehicles, it is apparent that said right is granted to the Public Service Commission by the provisions of the statute above quoted.

[4] As to the extent of the jurisdiction and powers of the Commission in respect to the regulation of said business it is not necessary at this time to decide.

That the jitney business should be regulated cannot seriously be denied. The enterprise sprang into being throughout the country so suddenly, and in many places with such gigantic proportions, that the public was amazed. The streets of the cities suddenly filled with its vehicles, which run to and fro, without regulation, and in many instances without responsibility. It may operate in the congested parts of the city alone, and at any hour it desires. On the other hand, the trolley companies that have expended vast amounts of capital in installing their systems and equipping themselves for the use and benefit of the public, as well as for their own benefit, are obligated to run their expensive plants every day, "at all hours, under all weather conditions. They must give service whether there are passengers or

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not." In a great many instances they carry passengers distances that are unprofitable, and operate their cars under stringent regulations.

It would certainly be unjust and unfair, and, in fact, a rank discrimination, to impose the burden of regulation on one class of common carriers, and not subject another class, performing almost identically the same class of service, to any regulation whatever.

As was well said in one of the briefs filed in this case: "One carrier might conduct its business as it saw fit and indulge in practices that were unfair both to its competitor and to the general public, which might result in the destruction of the competitor which was regulated, and the survival of the carrier which could not be regulated and which, when its competitor was put out of business, could run its business as it pleased, to the detriment of the general public."

It could reduce its service at will or withdraw it absolutely. Without regulation it might become a detriment instead of a benefit to the public.

There is no just reason why the jitney bus business should not be subjected, like other common carriers of persons, to reasonable regulations. Its future success is largely conjectural. If it should develop that it is a better and cheaper means of transportation of passengers than that of the trolley systems, they may be eventually supplanted by it. As was stated in the Georgia case, hereinbefore cited, such regulation should not "be exercised for prohibitory or strangulation purposes." The problem of regulation should be approached in a rational manner, with a view of protecting the rights of the people as well as those of private interests.

The charter granted the city of Charleston by the legislature, among other things, provides:

"The council of said city shall have and is hereby granted the power . . . to have control of all streets, avenues, roads, alleys, and grounds for public use in said city, and to regulate the use thereof and driving thereon; . . . to make suitable and proper regulations in regard to the use of the streets, public places, sidewalks, and alleys by street cars, foot passengers, animals, vehicles, motors, automobiles, traction engines and cars, and to regulate the running and operation of the same so as to prevent

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obstruction thereon, encroachment thereto, injury, inconvenience, or annoyance to the public; . . . to license, tax, regulate, or prohibit . . . things or business on which the state does or may exact a license tax."

The council of the city of Charleston on the 26th day of June, 1915, passed an ordinance entitled:

"An Ordinance Regulating the Operation of Motor Vehicles (Commonly Known as Jitney Busses), and Providing for the Issuance of Permits to Owners and Drivers thereof, and Providing Penalties for the Violation thereof."

Said ordinance makes it unlawful for any person, firm, or corporation, either as principal, agent, or employee, to use or occupy any public street in the city of Charleston, with a motor vehicle, in the manner defined in the ordinance, without a permit or license. It imposes an annual license tax of $24 for each vehicle, requires bond in the penalty of $2,500, conditioned that the operator will not violate any of the provisions of the ordinance, and that he shall pay any and all lawful claims for damages for injury to persons or property sustained by passengers in such vehicles, or by any other person or persons that may be killed or injured or suffer damages to property by reason of the operation of said motor vehicles. It requires the vehicles to be operated by experienced drivers; designates the section of the city where said vehicles shall operate, requires them to operate certain hours of the day and not less than six days in each week, and requires them to carry any and all persons, indiscriminately, that offer themselves for carriage and tender the fare. Said ordinance contains many other requirements and restrictions not hereinbefore enumerated, which said ordinance, under the provisions of the charter of said city, became effective on the 28th day of July, 1915, —five days after the hearing of these cases before the Commission.

By reference to the charter of the city of Charleston and to the acts of the legislature creating the Public Service Commission, it will be readily observed that the powers of regulation over the operation of the business under consideration, granted by the legislature to the city of Charleston, are much broader than those granted the Commission. In addition to this fact, the municipal authorities, under whose constant observation a business is being

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operated, can regulate, control, and supervise said business far more effectively than can a board or commission not so situated.

The petitions in this proceeding were both filed after the passage of the said ordinance by the council of the city of Charleston, but before it went into effect, and before it could possibly be known whether or not the provisions of this ordinance would operate so as to furnish proper and adequate regulation of the jitney business.

It should not be, and it is not, the intention of the Commission to interfere with the local authorities in the regulation of purely local matters, over which the local authorities have full and complete jurisdiction and control.

The Interstate Commerce Commission in the case of Hastings M. Co. v. C. H. M. & St. P. R. Co. said: "The Interstate Commerce Commission may, in its discretion, decline to interfere with rates, etc., mainly local in their bearings, where it is clear that the Railroad Commission of the state has ample authority in law and perfect control over the situation."

It would appear that inasmuch as the matters in controversy are purely local, and that the local authorities have ample regulatory powers over the operation of the business in question, and are now regulating said business, that this Commission should not interfere with the operation thereof, and that it should remain, for the present at least, under the supervision and control of the municipal authorities of the city of Charleston.

[5] In regard to the complaint against defendants in refusing to carry passengers who were members of the colored race, the defendants by their answers have admitted that this was an unlawful discrimination, and agreed to carry thereafter all persons, regardless of race, color, or previous conditions of servitude. So, having conceded the relief asked for in this particular, it is unnecessary to enter into a discussion of this question.

The Commission is therefore of the opinion, for the reasons hereinbefore stated, to dismiss the petition of James Smith et al., and of the Charleston Interurban Railroad Company, without prejudice to said petitioners to apply at any time in the future to said Commission for redress of any grievances affecting them, or either of them, and it is accordingly so ordered.

The Commission does not deem it necessary at this time to pro-

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mulgate any rules relative to the regulation of the jitney bus business.

Northcott, Chairman, Dawson, Commissioner, concur.

ARKANSAS SUPREME COURT.

ROWLAND et al.

v.

SALINE RIVER RAILWAY COMPANY.

[No. 48.]

(— Ark. —, 177 S. W. 896.)

Service — Railroads — Duty to render.

1. The acceptance by a railroad company of its franchise privileges imposes upon it the duty of operating the railroad when constructed in the manner and for the purposes contemplated by its charter, which duty it may be compelled to perform by mandamus or other proper proceedings.

Service — Railroads — Statutory duties — Rendered at loss.

2. A railroad company may be compelled to perform its statutory duty to operate its road, although some pecuniary loss may result from rendering such service.

Orders — Unreasonableness — What constitutes — Operation of road at loss.

3. The fact that an order of a Railroad Commission, compelling the operation of one train each way daily over a railroad, is likely to cause pecuniary loss to the carrier, is not, of itself, sufficient to make the order arbitrary or unreasonable, but it is a circumstance to be considered.

Orders — Unreasonableness — Operation of railroad at loss.

4. An order of the Railroad Commission requiring the operation of one train for passengers and freight each way daily over a railroad 9 miles in length is arbitrary and unreasonable, where the railroad runs through a sparsely settled country, the receipts from such service costing $50 per day will not amount to $10 per day, it will cost a large sum to make the track safe for passengers, the company is heavily in debt, and is unable to procure any funds to operate its road, and the lack of means is not the result of mismanagement.

Courts — Powers — Unreasonableness of order of Commission.

5. The question whether or not an order of the Railroad Commission is reasonable is for the court.

Injunction — Restraint of enforcement of unreasonable orders.

6. Injunction is the proper remedy to curb an abuse of power by

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the Railroad Commission in issuing an arbitrary and unreasonable order compelling the operation of trains.

[June 14, 1915.]

FROM a judgment of the Pulaski Chancery Court for the plaintiff in an action by the Saline River Railway Company against the Railroad Commission and a prosecuting attorney for an injunction restraining defendants from enforcing an order of the Commission requiring the railroad company to operate its road, the defendants appealed. Affirmed.

Appearances: Wynne & Harrison for appellants; S. Brundidge and Harry Neelly for appellee.

Statement by Hart, J.:

The Saline River Railway Company instituted this action in the chancery court against the Railroad Commission and the prosecuting attorney of the tenth judicial circuit of this state to restrain them from further proceeding to compel said railway company to operate its line of railroad. The facts are as follows:

The Saline River Railway Company was organized in 1901, and constructed a railroad from Draughon, a station on the Cotton Belt Railroad in Cleveland county, Arkansas, to the town of New Edinburg, a distance of 9 miles. The road was completed and put in operation in December, 1901. Later it was extended to Glenn. The road was organized primarily for the purpose of hauling logs to the Saline River Lumber Company, whose plant was located at Draughon. The stockholders of the company also hoped that by the time all the logs of the lumber company were hauled the company would be developed to such an extent that there would be sufficient travel and business to justify the continued operation of the road. The cost of constructing the railroad and its rolling stock and equipment was $75,000.

In the summer of 1913 the Saline River Lumber Company had cut all its timber along the line of the road and began the work of removing its plant from the station of Draughon. Draughon is a town of about 150 inhabitants, and it is conceded that there will be only fifteen or twenty persons left after the lumber company's plant has been removed. New Edinburg

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is a town of about 300 population, and the intervening country between it and Draughon is sparsely settled.

The railroad company operated two trains each way daily upon its line of road from December, 1901, until August, 1913. At that time service from New Edinburg to Glenn was discontinued, and the tracks torn up between these two points. The road was continued to be operated between Draughon and New Edinburg until November, 1913, when the train service was discontinued, because there was no money with which to operate the road. On December 6, 1913, the Railroad Commission of the State of Arkansas made an order directing the railway company to resume passenger and freight service between Draughon and New Edinburg, and, as above stated, this suit was brought to enjoin the enforcement of that order. The order provided that the railroad company should operate one train each way daily between Draughon and New Edinburg. The company has no property except its road, track, and equipment, which are worth $18,000. The track is now badly out of repair, and it would take $5,000 to place it in repair so that trains could be run on it with safety. The actual cost of operating one train each way daily between Draughon and New Edinburg is $50 per day. The total receipts from passenger and freight service amount to not more than $10 per day. The railroad company since some time in January, 1914, has not operated a train over its line daily, but only does so at infrequent intervals to haul freight to the town of New Edinburg, and this, the officers say, is done merely for the accommodation of the inhabitants of that place. There is some testimony tending to show that the officers of the railroad company contemplate dismantling the road. The officials have made repeated attempts to sell the road for $18,000, the value of the rails, rolling stock, and other equipment of the road.

The chancellor granted the injunction as prayed for, and the case is here on appeal.

Hart, J., delivered the opinion of the court:

[1] The franchise rights and privileges of a railroad company are granted by the state in consideration of the resulting benefits to the public, and their acceptance by the railroad company imposed upon it the duty of operating the road, when constructed,

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the whole line of the road shows that to compel the operation of trains would be to entail a serious and continued loss, it would be unreasonable to prescribe and demand it, and it would not be required. The record shows that the railroad company has no means whatever with which to operate its line of road, and is unable to procure any for that purpose. It cannot even sell its road for the cost of its rails and rolling stock. The record does not show that this lack of means resulted from any mismanagement of the railroad.

An order made by the Railroad Commission should only be issued in the interest of the public. Under the undisputed facts there is no probability that the railroad can be operated, and the Railroad Commission should not make a vain and futile order. Such action on its part is arbitrary and unreasonable. See State ex rel. Little v. Dodge City, M. & T. R. Co. 53 Kan. 329, 24 L.R.A. 564, 36 Pac. 755; South Carolina ex rel. Cunningham v. Jack (C. C. A. 4th C.) 76 C. C. A. 165, 145 Fed. 281; Ohio & M. R. Co. v. People, 120 Ill. 200, 11 N. E. 347; 2 Elliott, Railroads 2d ed. ¶¶ 1056–1058.

[5, 6] Granting the Commission power to make orders does not necessarily take away the jurisdiction of the courts. As we have already seen, the orders of the Railroad Commission must be reasonable, and whether or not they are is a question for the courts to decide. The rule is that, where a tribunal, such as a Board of Railway Commissioners, exceeds its powers and issues an arbitrary and unreasonable order, an injunction is a proper remedy to curb the abuse of power. The only difficulty in practically applying the rule is in determining whether the Commission has exceeded its powers. 2 Elliott, Railroads 2d ed. ¶¶ 705, 706.

There is some testimony in the record tending to show that the officers of the railway company contemplate dismantling it. It does not follow that, because we have held that the order of the Railroad Commission was arbitrary and oppressive, the railroad company has a right to take up its rails and dispose of them on its own motion. In the case of Freeo Valley R. Co. v. Hodges, 105 Ark. 314, 151 S. W. 281, we held that, since railroads are constructed for public use, and the public has rights in them which should be protected, railroad corporations are

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not authorized to abandon their roads and surrender their charters without the consent of the state.

Under the facts disclosed in this case, the attorney general, in an action of quo warranto, might cause the charter of the company to be forfeited because the railroad company has abandoned the operation of its road. So, too, upon proper application a court of equity could take charge of the affairs and property of the railroad company by the appointment of a receiver. Thus the court would be able to protect the rights of creditors and stockholders, and to insure, as far as practicable, the discharge of the public function of the corporation. See 1 Elliott, Railroads 2d ed. ¶ 539.

From the views we have expressed it follows that the decree will be affirmed.

Kirby, J., dissents.

CALIFORNIA RAILROAD COMMISSION.

IN RE SOUTHERN COUNTIES GAS COMPANY.

[Decision No. 2458; Application No. 1575.]

Apportionment — Values — Gas and transmission lines — Method of prorating.

1. An apportionment of the investment in gas and transmission lines, whereby 14.5 per cent of the total cost is prorated to a city the patrons in which consume only 5.7 per cent of the total amount of gas transmitted through the lines, places an undue burden upon such patrons.

Valuation — Property not in use — Artificial gas plant — City supplied with natural gas — Amortization.

2. The value of an artificial gas plant constructed in accordance with the requirements of an ordinance passed by the board of trustees of a city should, so far as another city being supplied with natural gas is concerned, be amortized over a period of years, rather than maintained to provide for the remote possibility of continued interruption in the natural gas transmission system.

Apportionment — Expenses — Taxes — Basis of apportionment.

3. Taxes assessed against the property of a natural gas company supplying several communities should not be apportioned between the communities on an investment basis, where they are paid upon a gross revenue basis.

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Accounting — Operating expense statement — Inclusion of amortization of bond discount.

4. An item for amortization of bond discount which is essentially a part of the cost of obtaining money has no place in an operating expense statement.

Depreciation — Gas plant — Method of computation.

5. An allowance of $100 per month for the depreciation of the property of a gas company, while possibly justifiable on a "depreciated value" theory, is too large where the company claims on an investment of $61,914.24, but on the basis of investment a proper depreciation annually should be provided by a sinking fund, with interest at 6 per cent, which would result in an annuity not to exceed $486 for seven months.

Return — Operating cost — Decrease — Natural gas — Increased use of contractual minimum.

6. Although the return from the increased sales of natural gas for industrial purposes may be less than the cost of the gas plus ordinary losses, such sales may reduce the cost of service, provided they use only gas that would otherwise go to waste due to inability to dispose of the gas supply which the company is required to purchase in accordance with the contractual minimum.

Rates — Natural gas — Increase denied — Showing after short time of operation.

7. Rates voluntarily established, upon a change from an artificial to a natural gas service, by a gas company serving several communities, will not, after only eleven months' operation, be increased by the Commission in one particular community upon the showing that for such a period the rates as applicable to that locality may not have yielded the anticipated revenue.

Rates — Factors to be considered — Purchase of appliances by consumers in reliance upon low rates.

8. In considering an application of a natural gas company for an increase in its rates, the California Commission should give due consideration to the fact that such rates were voluntarily established, and that, apparently relying upon the company's ability to grant and willingness to continue such rate, a relatively large number of patrons have purchased appliances and made other material expenditures incidental to obtaining such gas service.

[June 7, 1915.]

APPLICATION by gas company for authority to increase rates, voluntarily established; denied without prejudice.

Appearances: Le Roy M. Edwards for applicant; Hartwick & Pearce for city of Orange; E. J. Marks for city of Fullerton; Homer G. Ames for city of Anaheim; G. H. Scott for city of Santa Ana.

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Loveland, Commissioner: This is an application by Southern Counties Gas Company of California for authority to increase rates for gas in the city of Orange.

Southern Counties Gas Company of California was organized on February 24, 1911, and subsequently acquired by purchase the following gas properties in Los Angeles and Orange Counties:

Table I.
Properties Acquired by Southern Counties Gas Company of California.

From Whom Acquired.	Date of Purchase.	Location of Properties.
1. Piedmont Gas Company	April 1, 1911	Monrovia and vicinity.
2. Covina Valley Gas Company	April 1, 1911	Covina and vicinity.
3. Southern California Edison Co...	April 1, 1911	Whittier.
4. Southern California Edison Co...	April 1, 1911	Santa Ana.
5. Orange County Gas Company ...	April 1, 1911	Orange, Anaheim and Fullerton.

The gas properties involved in this proceeding are located entirely within Orange county, and include, in addition to a gas manufacturing plant in Santa Ana, which is not now in use, and a high pressure transmission system connecting the several communities served with the source of natural gas supply, distribution system in the following named cities and towns:

Table II.
Cities and Towns Supplied by Southern Counties Gas Company of California in Orange County.

Name	Classification	Estimated Population
1. Santa Ana	City 5th Class	12,500
2. Orange	City 6th Class	4,000
3. Anaheim	City 6th Class	3,500
4. Fullerton	City 6th Class	3,000
5. Garden Grove	Unincorporated	1,100
6. Tustin	Unincorporated	900
7. Placentia	Unincorporated	700

The present rates in effect in Orange county are shown in table III.

Table III.
Rates for Natural Gas in Orange County.
(Southern Counties Gas Company of California.)

SCHEDULE "A."

Applicable to natural gas for "all ordinary domestic consumption and for industrial consumption having peak load demands."

Effective in the cities of Santa Ana, Orange, Anaheim, and Fullerton and on intervening county roads.

First 10 M cu. ft. per month ..... 75 cents per M
Next 5 M cu. ft. per month ..... 70 cents per M

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Next 5 M cu. ft. per month	65 cents per M
Next 10 M cu. ft. per month	60 cents per M
Next 10 M cu. ft. per month	55 cents per M
Next 10 M cu. ft. per month	50 cents per M
Next 20 M cu. ft. per month	45 cents per M
Next 30 M cu. ft. per month	40 cents per M
Next 50 M cu. ft. per month	35 cents per M
All over 200 M cu. ft. per month	30 cents per M

Minimum monthly charge: 50 cents per meter in cities and $1.00 per meter in unincorporated territory.

SCHEDULE "B."

Applicable to natural gas for "industrial consumption without peak load demand."

Effective in all territory served in Orange County.

First 10 M cu. ft. per month	75 cents per M
Next 10 M cu. ft. per month	40 cents per M
Next 10 M cu. ft. per month	30 cents per M
Next 20 M cu. ft. per month	20 cents per M
All over 50 M cu. ft. per month	15 cents per M

Minimum monthly charge: 50 cents per meter in cities and $1.00 per meter in unincorporated territory.

SCHEDULE "C."

Applicable to natural gas "for all gas engine power."

Effective in all territory served in Orange county.

Straight rate	30 cents per M

Minimum monthly charge: 50 cents per meter in cities and $1 per meter in unincorporated territory.

SCHEDULE "D."

(*Tustin rate.*)

Applicable to natural gas "for all ordinary domestic consumption and for industrial consumption having peak load demands."

Effective in Placentia, Garden Grove, Tustin and on county roads adjacent thereto.

First 2 M cu. ft. per month	100 cents per M
Next 3 M cu. ft. per month	80 cents per M
Next 10 M cu. ft. per month	75 cents per M
Next 15 M cu. ft. per month	60 cents per M
Next 30 M cu. ft. per month	50 cents per M
Next 40 M cu. ft. per month	40 cents per M
Next 50 M cu. ft. per month	35 cents per M
All over 150 M cu. ft. per month	30 cents per M

Minimum monthly charge: $1.00 per meter.

Petitioner's present application contemplates increasing only the rates now in effect in the city of Orange as shown in Schedule "A," table III. The rates which petitioner asks authority to establish in Orange are the same rates now effective in certain unincorporated territory in Orange county as shown in Schedule "D," table III.

Until about May, 1914, the people of Orange were supplied with artificial gas from petitioner's gas manufacturing plant at Santa Ana through a high-pressure line which also supplied

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the cities of Anaheim and Fullerton and certain unincorporated towns and rural territory. At that time the transmission system of petitioner consisted of a 4-inch line extending from Santa Ana in a northwesterly direction to the city of Anaheim, and from Anaheim a 3-inch line extended on to Fullerton, there connecting with a 2-inch line which supplied Palacentia. The rates in Orange for artificial gas, as fixed by the Commission in application No. 380, were $1.22 per 1,000 cubic feet for the first 10,000 and $1 per 1,000 cubic feet for all gas used in excess of 10,000 cubic feet per month.

Apparently petitioner entered into serious negotiations for the purchase of a supply of natural gas during the latter part of 1913, and on November 17th of that year it entered into an agreement with the city of Fullerton under the terms of which agreement and in consideration of the city of Fullerton not installing a municipal gas distributing system, petitioner obligated itself to have natural gas ready for distribution to the inhabitants of that city "within ninety days from the 21st day of October, 1913." Petitioner further agreed to "use its best endeavors to secure a sufficient supply of natural gas for distribution to the citizens of the city of Fullerton; that it will purchase said gas from whatever source may be available, and as long as said supply lasts will, if it is possible for the first party to secure said gas, distribute the same for sale to the citizens of the city of Fullerton."

It is further agreed that the said natural gas "will not be mixed with artificial gas, and will contain the best possible number of heat units to the cubic foot thereof."

The price at which natural gas is to be sold in the city of Fullerton shall be "not more than the sum of seventy-five cents (75c) per thousand cubic feet for gas used for domestic purposes and that by and with the consent of the board of trustees of the city of Fullerton a reasonable reduction from the pipe for gas used for domestic purposes will be made for gas used for manufacturing and industrial purposes."

The agreement referred to further provides "that at no time during the life of this agreement will the party of the first part charge its consumers more than the rate hereinbefore specified for gas sold in the city of Fullerton, unless a rate in excess there-

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of is fixed by the board of trustees or other rate-fixing body having jurisdiction to fix rates in said city."

Having obtained assurance of at least its initial market, and forestalled the installation of a municipal distribution system by the city nearest the natural gas fields, petitioner proceeded to secure a supply of gas sufficient for its needs.

Early in 1914 arrangements were made by petitioner for a supply of natural gas from the Olinda oil fields, and on January 23, 1914, one A. S. Bradford assigned to petitioner his contract with the Petroleum Development Company, which contract was dated January 15, 1914, and provided substantially as follows:

(a) Petroleum Development Company agrees to sell to A. S. Bradford and the latter agrees to purchase and receive from the former daily for five years all natural gas which Petroleum Development Company "has to spare and desires to dispose of up to 1,000,000 cubic feet per day of 24 hours." A. S. Bradford is given first right to purchase any natural gas in excess of 1,000,000 cubic feet per day which Petroleum Development Company "desires to dispose of."

(b) Petroleum Development Company is obligated to sell to A. S. Bradford "only the gas it has available, after retaining all that is necessary for its requirements of every nature, it being the sole judge thereof; which shall include the pumping of water, and topping, cleaning, or refining its gas and oil, by itself or through any third party; also gas for its employees and others living upon its property and upon the property of the Atchison, Topeka, & Santa Fe Railway Company, including the depots at Olinda and Richfield."

(c) Gas is to be measured by a meter furnished and maintained by Petroleum Development Company, and the volume of gas is to be computed on a four-ounce basis at an altitude of 530 feet above sea level at 60° Fahr.

(d) A. S. Bradford agrees to furnish and install gas engine and booster pump to be located on Petroleum Development Company's premises, said engine and pump to be operated by Petroleum Development Company's employees free of charge.

(e) Bills to be rendered by Petroleum Development Company by 25th of each month.

(f) A. S. Bradford agrees to take the gas "in its regular

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and uniform passage and measurement through the meter each hour of the day without interruption or break, up to the specified daily limit, and to pay for same at the agreed price hereinafter mentioned, and no claim that the contractor is unable to dispose of the whole of the gas so delivered or offered, shall be a valid objection to such agreed full delivery."

(g) Deliveries of gas to begin as soon as the pipe line of A. S. Bradford has been laid and connections made, "but in any case not later than March 15, 1914." Life of contract is for five years, with buyer's option of renewal for another like period.

(h) Price of gas furnished under this agreement "shall be eight cents per 1,000 cubic feet for the first five years of this agreement; if the contractor, his successors, or assigns shall elect to exercise his or their option for a second period of five years, as provided in § 7 hereof, the price shall not be less than 8 cents per 1,000 cubic feet."

(i) Contract may be assigned if the assignment is satisfactory to and accepted by Petroleum Development Company.

(j) At expiration of contract purchaser of gas is to have thirty days in which to remove his property from lands of Petroleum Development Company.

On February 18, 1914, the board of trustees of the city of Santa Ana passed and approved ordinance No. 568, fixing the price at which natural gas should be sold to the inhabitants of that city at 75 cents per 1,000 cubic feet for "any and all illuminating and heating purposes," and also fixing the minimum charge of 50 cents per month. This ordinance also provides "that in the event the failure to supply natural gas extends beyond thirty days," then the price at which artificial gas shall be sold shall not exceed $1 per 1,000 cubic feet.

On February 18, 1914, petitioner filed with this Commission, concurrently with a separate application for authorization to issue additional bonds for the purpose of building pipe lines to convey natural gas from the oil fields, "to the town of Orange and other localities," an application to charge a rate of 75 cents per 1,000 cubic feet for natural gas to be distributed by petitioner in Orange. This application here referred to sets forth among other things: "That a rate of 75 cents per 1,000 cubic feet

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of natural gas is a fair rate for said Southern Counties Gas Company of California to charge for natural gas for domestic purposes within the corporate limits of said town of Orange, and that the board of trustees of said town of Orange have duly passed resolutions stating that said rate of 75 cents per 1,000 cubic feet of natural gas for domestic purposes is a reasonable rate and satisfactory to said board of trustees."

As further indicating the plans of petitioner for securing a market for its natural gas and as showing the understanding between petitioner and the several communities as to the price at which this commodity would be sold, I will quote from a report dated May 13, 1914, by William A. Baehr, consulting engineer of Chicago, upon the properties and business of petitioner, in which report, after referring to the Fullerton agreement and the Santa Ana ordinance, heretofore mentioned as providing for 75 cent gas Mr. Baehr says: ". . . and the company at the same time voluntarily agreed to furnish natural gas to the cities of Orange and Anaheim at the same figure, and to Garden Grove at $1 per thousand cubic feet."

A careful consideration of the facts above referred to admits of no other conclusion than that the present maximum rate of 75 cents per thousand feet of natural gas sold in the cities of Santa Ana, Orange, Anaheim, and Fullerton was arrived at by petitioner after an exhaustive investigation of the entire subject, and that as a result of such investigation petitioner agreed to establish such maximum rate notwithstanding the fact that it was well known to petitioner that the introduction of natural gas would be followed by a temporary loss, both in the quantity of gas sold and in the revenue to be obtained. That a temporary loss was anticipated is evident from the following statement which appears on page 282 of Mr. Baehr's report:

"The amount of business which the company obtains will depend in a great measure upon the vigor with which it is sought. It is extremely difficult to forecast what amount of gas will be sold during the coming years. In the estimate of the consumption of gas per meter per annum for domestic purposes, it has been estimated that this consumption would be lower temporarily, but that it would recover within a comparatively short time, and due to the heating load which will be acquired by reason of

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the lower price and increased quality, will eventually exceed the present consumption."

A supply of natural gas having been obtained, a market secured, and the price for that portion of the supply which was to be consumed by practically all of the consumers then connected, having been fixed by ordinance and agreement at a figure which petitioner itself had proposed, petitioner proceeded to connect the supply with its system. A 6-inch high pressure line was constructed from the Olinda gas field to Anaheim, at which point it feeds petitioner's Orange county system. This line is 8.7 miles in length, and was laid at a cost of $32,993. It was completed in April, 1914, and the delivery of gas commenced in May.

Due to insufficient well pressure to adequately handle the peak load, and the fact that the draft on this field could not be increased without interference with oil pumping operations, it was deemed necessary to obtain an additional supply. Concurrently a number of large industrial consumers were secured so that it was decided to build a line from the Coyote Hills field. Accordingly on November 18, 1914, a contract was entered into between Murphy and Dillon and Southern Counties Gas Company, whereby the former agreed to supply natural gas to be produced from the wells of the Standard Oil Company at a minimum pressure of 100 pounds per square inch, to an amount not to exceed 2,500,000 cubic feet per day, the minimum being 500,000 cubic feet per day for the first six months, increasing thereafter to 1,000,000 cubic feet after the first year of the contract.

The contract provides that "the point of delivery of all the gas sold by the sellers and purchased by the buyer hereunder shall be at the terminus of the seller's pipe line at the north line of Commonwealth avenue, immediately adjoining its intersection with the center line of said section 31, township 3 south, range 10 west, in the county of Orange, state of California."

This point is some 3 miles south of the gas field, and the intervening pipe line is owned by the sellers. Also,

"As part of this transaction the sellers will advance to the buyer funds or the equivalent in materials at current market prices with which the buyer is to install its own 6–inch gas line

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from the intersection of the center line of said section 31 with Commonwealth avenue to the city of Fullerton, California, all of which advances the buyer will repay to the sellers on or before the 1st day of July, 1915, together with interest at the rate of 7 per cent per annum from date of advances, and to represent said indebtedness the buyer shall make, execute, and deliver to the sellers its promissory note or notes in such form as the sellers may require to be secured by a pledge of $35,000 face value of the buyer's three-year gold notes secured by mortgage upon all of its assets and property."

This portion of the line, 3.6 miles in length, was constructed by petitioner at a cost of $12,356.15.

The gas is measured at the field, at which point delivery is made, at a rate of 10 cents per 1,000 cubic feet.

Subsequent to the execution of this agreement and on April 15, 1915, petitioner executed a contract with the same parties, Murphy and Dillon, whereby petitioner agrees to transmit gas over this line for sale to the Anaheim Sugar Company for which service petitioner is reimbursed at the rate of 1½ cents per 1,000 cubic feet. To render this service, petitioner was compelled to build some 5,700 feet of 6-inch line.

Under the two contracts for purchase of gas heretofore alluded to, petitioner is obligated to receive and pay for

1. (Under the Bradford contract)—All excess gas up to 1,000,000 cubic feet per day, and

2. (Under the Murphy-Dillon contract)—500,000 cubic feet increasing to 750,000 on July 1, 1915, and 1,000,000 on January 1, 1916.

Under actual operating conditions the minimum under the first contract averages 600,000 cubic feet, so that the average total minimum at present is 1,100,000, increasing as heretofore noted.

Petitioner claims an investment in Orange county on February 1, 1915, of $464,829.83 of which $62,635.92 is prorated to the city of Orange. The present or depreciated value of this latter investment, which is claimed to be $61,914.24, made up as follows:

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Table IV.

Statement by Southern Counties Gas Company of Investment Prorated to the City of Orange.

	Percentage Prorated to Orange	Basis of Segregation	Amount Prorated to Orange
Intangible:			
1. Organization expense	7.4	Investment	$ 1,561.47
2. Development expense (accrued deficit)	100	Orange only	2,150.29
Tangible:			
3. Real estate	100	Orange only	1,367.89
4. Distribution system	100	Orange only	27,457.27
5. Local transmission	100	Orange only	833.78
6. Natural gas lines	14.5	Meters	6,479.90
7. Primary transmission line ..	14.5	Meters	3,459.55
8. Santa Ana gas plant, etc. ...	14.5	Meters	15,914.76
9. Distribution equipment (southern part of territory only)	20.9	Meters	1,291.62
10. General office furniture and fixtures (entire system) ..	8.3	Meters	197.71
Total investment	.....	.....	$61,914.24

While the above tabulation is claimed to represent the investment of petitioner in connection with gas service supplied to the city of Orange, it is obvious that the total figure of $61,914.24 is in reality an estimate of the cost to reproduce less an estimated accrued depreciation, the basic figure having been obtained largely from valuation reports heretofore made of petitioner's property.

[1] While I do not feel that it is necessary at this time to go into extensive detail regarding the investment necessary to serve natural gas within the city of Orange, I desire to call attention to the fact that the method of prorating used by petitioner cannot but result in an undue burden being placed on the consumers of gas in that city. To make this point clear I will refer to items No. 6 and No. 7 in table IV. These gas lines and transmission lines representing, according to petitioner, a joint investment of $68,548.38, during the period from July 1, 1914, to March 1, 1915, supplied the city of Orange with only 7,799,000 cubic feet of natural gas out of a total of 135,970,000 cubic feet sold in Orange county. Notwithstanding the fact that petitioner's patrons in the city of Orange consumed only 5.7 per cent of the gas transmitted through the lines re-

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ferred to, 14.5 per cent of the total cost of the lines are prorated to Orange on the method used.

[2] Another point worthy of mention is that, notwithstanding the fact that, under the provisions of ordinance No. 568, passed by the board of trustees of the city of Santa Ana on February 16, 1914, by the terms of which petitioner is required to maintain a manufacturing plant for artificial gas in that city, 14.5 per cent of the cost of the Santa Ana plant is prorated by petitioner to the city of Orange. It would appear that, in so far at least as the territory served by petitioner outside the city of Santa Ana is concerned, that the present Santa Ana plant is not necessary at this time, and that it would be more proper to amortize the remaining value of that plant over a period of years than to attempt to maintain it to provide for the rather remote possibility of continued interruption of the transmission system.

There are other rather important questions pertaining to the segregation of capital to Orange, which it will be necessary to consider before a final rate is fixed for that city, but which I will not attempt to discuss at this time.

The cost of service supplied in the city of Orange for the period of seven months from July 1, 1914, to February 1, 1915, is estimated by petitioner to be as follows:

Table V.

Statement by Southern Counties Gas Company of Cost of Service in Orange July 1, 1914, to February 1, 1915.

1. Cost of gas delivered (6,359,000 cubic feet)	$ 773.41
2. Cost of transmission (5.5 per cent of total expense)	90.03
3. Cost of distribution in Orange (actual)	637.87
4. Commercial expenses in Orange (actual)	892.34
5. General expenses (8.3 per cent of total general expense)	1,316.46
6. Taxes (prorated on investment basis)	564.64
7. Amortization of bond discount (prorated on investment basis, 7.4 per cent of total)	284.90
Total expense exclusive of depreciation	$4,559.65
8. Depreciation at $100 per month	700.00
Total expense	$5,259.65

The total gross revenue from the city of Orange for the same period covered by table V is reported as $5,000.84.

[3] Petitioner's statement as to cost of service in Orange is subject to much the same criticism as is the statement of investment set forth in table IV. By the petitioner's method of

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prorating the several items of expense, the cost of service in Orange is made to appear much higher than it would be if a more equitable basis of segregation had been used. For example, the item "taxes" has been prorated on an investment basis when, as a matter of fact, taxes are now, and have for a number of years past been, paid on the basis of gross revenue. On a proper basis, and at the rate effective for the period covered by petitioner's statement, the taxes applicable to petitioner's business in the city of Orange could not have exceeded $409.21 as compared with the petitioner's segregation of $564.64 for this item.

The item, "general expense, $1,316.46," appears very high in comparison with the other expenses involved, being more than 35 per cent of the total of items No. 1 to No. 5, inclusive, and practically 55 per cent of the items No. 1 to No. 4, inclusive. This item of expense may, however, be justified upon further investigation.

[4] The item, "amortization of bond discount, $284.90," has no place in an operating expense statement, inasmuch as it is essentially a part of the cost of obtaining money to be considered and provided for, when proper, in the rate of return which is allowed.

[5] Item No. 8, "depreciation at $100 per month, $700," while possibly justifiable on a "depreciated value" theory, which contemplates a corresponding deduction from capital in determining an equitable basis for estimating a proper rate of return, is much too high on the basis of value set forth in petitioner's statement of investment as shown in table IV. On petitioner's basis of investment, a proper depreciation annually should be provided by a sinking fund, with interest at say 6 per cent. This method would result in an annuity not to exceed $486 for the seven months.

These adjustments alone, which are only tentative, would reduce the total expense, less depreciation, to $4,154.32, leaving $846.52 for interest and depreciation. Obviously the amount thus available is less than it should reasonably be after sufficient

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time has elapsed for the revenue to again become normal. On the other hand, it is probable that with a careful segregation of the costs properly assignable to service in Orange, the balance applicable to interest and depreciation would be greater than the sum above mentioned. It is also to be expected that, with returns for a full year's operation upon a natural gas basis, the gross revenue will materially increase and a corresponding increase in net earnings will be realized.

[6] Another factor of great importance in its effect on the cost of service is the excessive loss which has heretofore existed, due to inability to dispose of the gas supplied in accordance with contractual *minima*. It is to be expected that a considerable reduction in this waste will result from the improvement in load factor due to increased industrial sales.

Consideration must be given to the effects of the growth of the industrial load other than the reduction of losses. In any case in which the sale price exceeds cost of gas plus ordinary losses, this class of business obviously reduces the cost of service. It may return even less than this, and still have the same effect, provided that it utilizes only gas that would otherwise waste.

One contract which petitioner has secured which will have a most decided effect on its revenue is that for transmission of gas to the Anaheim Sugar Company, heretofore referred to. Petitioner estimates a net return from this contract of $4,740 in 1915, over and above operating expenses and losses. A total estimated investment will be required to supply this load of $4,867, of which some $2,700 is useful and necessary in augmenting transmission capacity. Taking fixed costs at 10 per cent of the balance, we have a net profit of $4,523.

[7] In order to determine the effect which the introduction of natural gas and the reduction of rates has had upon petitioner's business in Orange, and whether or not the present conditions, as pointed out by petitioner, may be considered as permanent or only of a temporary nature, the following analysis has been made covering the period from April, 1911, to and including March, 1915:

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Table VI.
Operating Statistics Southern Counties Gas Company of California.
(City of Orange.)

Year	July 1st, Number Consumers	Increase or Decrease	Gas Sold, Thousand Cubic Feet	Increase or Decrease	Revenue	Increase or Decrease
1911 (9 months)	397	.....	4,455	.....	$ 6,299.95	.....
1912	454	14.36%	9,932	†*+68.07%	11,978.77	†*+46.68%
1913	528	16.30%	11,826	+19.06%	14,165.48	+18.16%
1914	693	31.25%	10.767	— 8.70%	10,481.21	—26.01%
1915 (3 months)	826	*35.18%	5,179	+51.21%	3,303.62	—20.34%

*Increase or decrease compared with same period of previous year.
†Estimated.

The above tabulation shows the general effect of the substitution of natural for artificial gas in May, 1914, and indicates a material improvement during the first three months of 1915. Table VI. also shows a remarkable increase in the number of consumers served by petitioner following the introduction of natural gas and the reduction of rates, which two factors, a higher grade product and a lower price, combined to make the use of gas more popular.

The effect of natural gas at lower rates upon the gross revenue received by petitioner from the city of Orange, each month since natural gas was substituted for the artificial product, as compared with the same period for the year previous is shown in the following tabulation:

Table VII.

Gross Revenue From Sale of Gas in Orange.
(Eleven months ending March 31, 1915, compared with the same period ending March 31, 1914.)

Month	1913	1914	Decrease
May	$1,166.55	$543.00	53.5%
June	1,179.50	517.04	56.2%
July	1,047.97	537.30	48.7%
August	1,007.53	556.10	44.8%
September	1,150.61	625.08	45.7%
October	1,302.72	638.56	51.0%
November	1,502.08	724.47	51.8%
December	1,296.46	838.50	35.4%
	1914	1915	
January	$1,588.42	$1,080.83	32.0%
February	1,246.27	1,094.08	12.2%
March	1,312.38	1,228.71	14.0%

The comparison made in table VII. shows that the maximum

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decrease in revenue, amounting to 56.2 per cent, occurred during the second month following the introduction of natural gas, and that this condition continued with slight improvement for five months thereafter, after which period the earnings rapidly increased until at the end of eleven months the gross revenue was only 14 per cent less than it had been the year before. Even more significant is the information obtained by comparing the average consumption per consumer in Orange for the month of maximum decrease in gross revenue with that for the month of minimum decrease in revenue shown in table VII. This comparison discloses the fact that in June, 1913, the average consumption per consumer was 1,855 cubic feet, while in June, 1914, the average was only 946 cubic feet; a decrease of 49 per cent. However, in February, 1914, the average consumption of gas was 1,678 cubic feet, as compared with 1,744 cubic feet in February, 1915: a net increase of 3.9 per cent.

The above comparisons deal only with conditions in the city of Orange, which are not typical of the conditions over the entire Orange county district served by petitioner. An excellent comparison between conditions prevailing over all territory served from petitioner's Orange county system when artificial gas only was being supplied, and the conditions existing eleven months after the introduction of natural gas, is obtained in the following table, using the month of March as a basis:

Table VIII.

Comparison of Operating Statistics for the Month of March, 1914, and 1915. Orange County.

	1914	1915
Gas sold, cubic feet	8,617,600	19,766,800
Gross revenue	$8,901.24	$9,277.26
Meters in service	4,489	5,763
Average consumption per meter, cubic feet	1,919	3,430
Average revenue per meter	$1.98	$1.61
Average revenue per 1,000 cubic feet	1.03	47

After a careful consideration of all the circumstances connected with this application, I am convinced that sufficient time has not elapsed to determine with a reasonable degree of certainty whether or not the rates voluntarily established by petitioner in the city of Orange and other communities in Orange county will yield a reasonable return upon the investment of

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petitioner used and useful in connection with the distribution of natural gas in that territory. While the efforts of petitioner, which have resulted in giving the inhabitants of Orange county a better service at lower cost, are to be commended, and while the Commission will not hesitate to readjust the present rates if it is found that after a fair trial the revenue to be derived is inadequate, I desire to call attention again to the fact that the present rates were voluntarily established by petitioner apparently after a careful investigation of conditions existing in the entire territory to be served by it in Orange county. If it should develop later that after a fair trial the present rates are inadequate, and petitioner should desire to again bring the matter to the attention of this Commission, the Commission will at such time carefully consider the entire problem, including any losses which petitioner may have theretofore sustained by reason of the introduction of natural gas and the reductions of its rates, with a view to determining what, if any, modifications should be made in the rates then in effect to enable petitioner to profitably continue its business in Orange county. However, for the reasons hereinbefore stated, this Commission cannot be expected, after only a few months' operation under the present rates, to grant an increase in one particular community upon the showing that for such a period the rates, as applicable to that locality, may not have yielded the anticipated revenue.

[8] There is another and very important phase of the problem which merits careful consideration, both by petitioner and by this Commission, which has to do with the consumers of gas in the city of Orange and in other communities. Apparently, relying upon petitioner's ability to grant and willingness to continue the rates established for natural gas, a relatively large number of persons have purchased appliances and made other material expenditures incidental to obtaining gas service. These consumers, individually, are entitled to feel that their contracts for service will receive the same consideration and entitle them to the same degree of protection as would the contracts with entire communities.

In view of all the facts now before the Commission, and for the reasons heretofore set forth, there remains no alternative

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other than to recommend that the application be denied without prejudice.

I submit the following form of order:

ORDER.

A public hearing having been held in the above-entitled proceeding, and the same having been submitted and being now ready for decision,

It is hereby ordered that the above-entitled application be, and the same is hereby, denied without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

ILLINOIS PUBLIC UTILITIES COMMISSION.

IN RE GILLESPIE HOME TELEPHONE COMPANY.

[No. 3259.]

Valuation — Overhead expenses — Reconstructed telephone company.

1. In valuing a reconstructed telephone company's property as an operating plant for rate-making purposes, an addition of 15 per cent was made to the capital account to cover overhead expenses during construction.

Rates — Telephones — Advances necessitated by reconstruction.

2. A telephone company was allowed to put into effect a new schedule of increased rates necessitated by the reconstruction of its telephone property to replace an obsolete grounded line magneto service, no objection having been made to the new schedule.

[July 22, 1915.]

APPLICATION of petitioning telephone company for authority to change rates. It appearing that the company had reconstructed its plant and had been ordered to replace an obsolete grounded magneto exchange service, and that the existing rates were insufficient to product a reasonable return, the company was allowed to establish its proposed schedule, which, however, was in itself insufficient for the present to produce a reasonable return for the company. The new schedule will be found in the order.

The appearances are set out in the opinion.

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By the Commission: The petitioner in this case is a public utility engaged in the management and operation of a telephone system in Macoupin county, with exchanges at Gillespie and Benld, and seeks the authority of the Commission to establish a new schedule of rates or charges for all classes of service in the city of Gillespie.

Application sets forth that the present schedule of rates was established several years ago and applied to grounded line magneto exchange service; that the old plant became obsolete; that the petitioner has expended a large sum of money for the construction of a new central energy plant including a central office building; that the revenue derived from the present rates is not sufficient to cover the expense of operation and maintenance, including depreciation, and pay a reasonable return on the investment; and that the Gillespie Commercial Club and the city council of the city of Gillespie have approved the newly constructed plant and the schedule of rates proposed by the petitioner.

The rates now in force and effect as set forth in the application are as follows:

Classification	Rates
Individual line business telephone	$24.00 per annum
Party line business telephone, metallic circuit	21.00 " "
Party line business telephone, grounded line	18.00 " "
Individual line residence telephone, metallic circuit desk set	21.00 " "
Individual line residence telephone grounded line desk set	18.00 " "
Individual line residence telephone, metallic circuit wall type	18.00 " "
Individual line residence telephone, grounded line wall type	15.00 " "
Party line residence telephone, metallic circuit desk set	18.00 " "
Party line residence telephone, grounded circuit desk set	15.00 " "
Party line residence telephone, metallic circuit wall type	15.00 " "
Party line residence telephone, grounded line wall type	12.00 " "
Party line rural grounded line	12.00 " "
Extension telephones	6.00 " "
Extension bells	1.80 " "
City exchange area extends for a radius of 1 mile from the central office.	

The schedule of rates that the petitioner proposes to be put into effect follows:

Individual line business telephone, metallic circuit	30.00 per annum
Two-party line business telephone, metallic circuit selective ringing	24.00 " "

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Individual line residence telephone metallic circuit	21.00	"	"
Two-party line residence telephone, metallic circuit selective ringing	18.00	"	"
Four-party line residence telephone, metallic circuit selective ringing	15.00	"	"
Party line rural telephone grounded line	15.00	"	"
Extension telephones	6.00	"	"
Extension bells	1.80	"	"

A discount of 10 cents per month will be given on all bills for city service if paid at the office of the company on or before the 15th day of the month in which the service is rendered, said discount to be in effect for the period of one year from the installation of this schedule of rates, and to be then abandoned.

A discount of 25 cents per month will be given on all bills for rural service if paid at the office of the company, quarterly in advance on or before the last day of the first month of the quarter in which the service is rendered.

Hearing in this case was held at Springfield, Illinois, February 16, 1915. Orville F. Berry and B. B. Boynton, attorneys, appeared for the petitioner; no one appeared objecting.

It appeared from the testimony that the petitioner recently built a new central energy telephone plant in the city of Gillespie, replacing a magneto system that had been in operation for a number of years, that did not meet the requirements of the community; that prior to the building of the new plant, the officers of the Gillespie Home Telephone Company thoroughly canvassed the telephone situation in the city of Gillespie with a view of getting an expression from the prominent business men of the city as to the kind of a telephone system and the character of service that was desired. The matter was taken up with the city council of the city of Gillespie and the Gillespie Commercial Club, and a committee representing these bodies made an inspection of a number of modern telephone plants in the state, and the report of this committee resulted in both bodies adopting resolutions urging the Gillespie Home Telephone Company to install a modern central energy telephone system in the city of Gillespie.

The rates or charges for service to become effective after the completion of the new plant were tentatively agreed upon by the Gillespie Home Telephone Company, the city council of the city of Gillespie, and the Gillespie Commercial Club, and the peti-

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tioner now seeks the authority of the Commission to put into effect such schedule of rates.

Bert Rice, mayor of the city of Gillespie, and Alfred A. Isaacs, president of the Gillespie Commercial Club, appeared as witnesses for the petitioner, and it appeared from their testimony that the petitioner in building the new exchange plant had complied with all the requirements imposed by the city of Gillespie, and that no objection exists to the proposed schedule of rates.

The petitioner submitted an inventory and appraisal of the property of the Gillespie Home Telephone Company as of date, December 24, 1914, according to which the depreciated value of the Gillespie exchange plant on a reproduction cost present basis, including an allowance of 15 per cent for overhead expenses during construction, is $53,721.60, as shown by the following table:

Final Summary, Gillespie Plant.

	Cost of Reproduction.	Cost Less Depreciation.
1. Real Estate	$5,550.00	$5,550.00
2. Central Station Equipment	5,615.00	5,615.00
3. Distribution System	29,097.50	27,357.00
4. Subscriber Station Equipment	5,330.50	4,957.00
5. Furniture and Fixtures	225.00	225.00
6. Tools and Vehicles	1,000.00	800.00
Total	$46,818.00	$44,504.00
7. Add 15%	7,022.70	6,675.60
Total	$53,840.70	$51,179.60
8. Stores and Supplies	3,597.00	2,542.00
Total	$57,437.00	$53,721.60

In order to determine the accuracy of the inventory and appraisal, an examination of the physical property of the Gillespie Home Telephone Company was made by the Commission's experts. The central office equipment and a portion of the outside plant were carefully checked with the inventory. Furniture, fixtures, tools, vehicles, stores, and supplies were not itemized in the inventory, and it was necessary to secure more detailed lists of these items. It appeared that the inventory of much of the outside plant was prepared from the plans and specifications used in the reconstruction of the Gillespie exchange and from distribution maps of the rural plant. All available plans, specifications,

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records of new construction, and maps indicating the layout of the distribution plant were carefully studied, and, as far as it was practicable to determine, considering that no complete field count had been made, the inventory submitted by the petitioner appears to be substantially correct.

An analysis was made of the costs set up in the appraisal, and by comparison with average costs it appeared that the value of some items had been underestimated in certain instances, while the value of other items had been overestimated. The various unit costs were not classified to indicate exactly how they had been computed, and it was necessary to secure considerable additional unit cost data.

A comparative analysis of this additional information, indicating the division of the unit costs into their component elements, was sufficient to show that the cost new and depreciated values attached to the physical property as a whole are reasonable.

[1] The allowance of 15 per cent for overhead expenses during construction is based largely on the fact that the Gillespie Home Telephone Company, upon purchasing the property from the previous owners, was required to reconstruct practically the entire Gillespie plant with the exception of the rural lines. The old city plant apparently had been poorly maintained, and it appears that very little of the old plant could be used in the reconstruction of the exchange, which virtually amounted to building a new plant.

According to the evidence submitted, the operating revenues prior to reconstruction were practically absorbed by operating expenses, and it does not appear that any of the overhead expenses incurred during reconstruction, such as expenses of engineering, designing, and superintending the work during reconstruction, legal, organization, and other expenses, interest on investment, insurance and taxes, contingencies, etc., were charged to operating. In fact the available net operating income would have paid only a small part of these expenses. An addition of 15 per cent to the capital account to cover such preliminary expenses conforms with accepted engineering practices, and in view of the fact that the utility is being appraised as an operating concern, it appears reasonable to approve such an allowance in this case.

The present value of the Gillespie exchange, according to the appraisal, is considerably in excess of the average value of ex-

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changes in towns of the same size and serving about the same number of subscribers. It appears, however, that the plant has been installed with a view of serving a much greater number of subscribers in the immediate future, and the evidence submitted in the case indicated that the character of plant constructed was required in order to furnish the class of service demanded by the utility's patrons.

In connection with the inventory and appraisal, the petitioner submitted statements of earnings and expenses, from which it appears that the operation of the Gillespie exchange during the year 1914 resulted in a net income of $1,110.02, as shown by the following table:

Statement of Revenues and Expenses.

Telephone Operating Revenues:		
Rental Revenues	$5,965.74	
Toll Revenues	2,533.07	
Miscellaneous Revenues	119.89	
		$8,618.70
Less allowances to Sub.	$92.52	
Less tolls to other Co.	1,361.23	
		$1,453.75
Gross Income		$7,164.95
Expenses:		
Operating	$3,351.16	
General	2,620.07	
Taxes	83.70	
		$6,054.93
Income Less Expenses		$1,110.02

No amount was set aside for depreciation in 1914, and as $1,110.02 represents a return of only 2.7 per cent on an investment of $53,721.60, it appears that the utility must increase its net earnings if the plant is to be operated profitably.

The increase in revenue that may be expected if the proposed schedule of rates is put into effect is indicated by the following extract from the petitioner's statements:

Present Schedule.

Classification.	Annual Rates.	Annual Revenues.
202 Party line residence telephones	$12.00	$2,424.00
40 Party line business telephones	18.00	720.00
39 Private line residence telephones	18.00	702.00
3 Party line business telephones	21.00	63.00
9 Private line business telephones	24.00	216.00
138 Rural telephones	12.00	1,656.00
431		$5,751.00

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Proposed Schedule.

	Classification.	Annual Rates.	Annual Revenues.
180	4-party line residence telephones	$15.00	$2,700.00
22	2-party line residence telephones	18.00	396.00
39	Individual line residence telephones	21.00	819.00
43	3-party line business telephones	24.00	1,032.00
9	Individual line business telephones	30.00	270.00
138	Rural telephones	12.00	1,656.00
431			$6,873.00
	Estimated Increase		$1,092.00

According to the statements of the petitioner, therefore, the net earnings that will be available for depreciation, interest, and dividends under the proposed rates will amount to only $2,610 which is approximately 5 per cent of $65,721.60. Judging from the character of the plant, such a rate will not be sufficient to provide even a necessary depreciation reserve.

The petitioner's estimate of expenses for the Gillespie exchange during 1914 shows a charge of $3,351.16 to operating. On the basis of 431 owned telephones, this amount represents an expense of approximately $7.80 per telephone, which is less than the average operating expense per station of other exchanges of similar size and character.

In addition to operating expenses, there is an item of $83.70 for taxes, and further item of $2,620.07 classified as a general expense. This general expense is not apportioned on the basis of exchanges, but an analysis of such expense for the entire property indicates that it is chargeable to general office salaries, traveling expenses, and miscellaneous items.

It is reasonable to expect that inasmuch as the business of the Gillespie Home Telephone Company is conducted through a centralized organization, that controls the operation of several other telephone companies, better results would be obtained than in case of the average small isolated company. It is difficult, however, to appreciate the efficiency of a system under which the general expense of conducting the business of two exchanges of the size of Gillespie and Benld represent approximately 79 per cent of the total operating expenses.

It is apparent that the local organization of the Gillespie Home Telephone Company has been built up with a view to operating a

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high-class modern telephone exchange in the city of Gillespie; and while the present character of the town would not seem to warrant the establishment of so expensive a plant, it is presumed that the management of the utility must have considered the material possibilities of a greater development in the immediate future. This was substantiated by a study of the local conditions made by the Commission's experts. It is reasonable to assume, therefore, that the exchange will serve an increasing number of subscribers with little or no additional expense, and that the net revenue consequently will be greatly increased.

[2] After carefully considering all the facts in this case, it is the opinion of the Commission that while the establishment of the proposed rates will probably not yield sufficient revenues immediately to enable the utility to profitably operate the exchange at Gillespie, the present condition is abnormal and the true results of the establishment of the higher rates cannot be correctly estimated at this time. After the exchange has been in operation a greater length of time, and the number of subscribers has increased in proportion to the capacity of the plant, it may be necessary to consider some different schedule of rates. It is not likely, however, that the proposed rates will ever yield an unreasonable net return on the investment, and as no objection to these rates has been filed with the Commission, it appears proper to grant the relief prayed for by the petitioner.

It is therefore *ordered* that the petitioner, Gillespie Home Telephone Company, shall discontinue the schedule of rates or charges now in force and effect in the city of Gillespie, Illinois, and substitute in lieu thereof the following schedule:

Individual line business telephones, metallic circuit	$30.00	per	annum
2-party line business telephones, metallic circuit selective ringing	24.00	"	"
Individual line residence telephones, metallic circuit	21.00	"	"
2-party line residence telephones, metallic circuit selective ringing	18.00	"	"
4-party line residence telephones, metallic circuit selective ringing	15.00	"	"
Party line rural telephones, grounded circuit	16.00	"	"
Extension telephones	6.00	"	"
Extension bells	1.00	"	"

A discount of $0.10 per month will be allowed on all bills for city service paid at the office of the company on or before the 15th day of the month in which the service is rendered.

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A discount of $0.25 per month will be allowed on all bills for rural service paid at the office of the company, quarterly in advance, on or before the last day of the first month of the quarter in which the service is rendered.

It is further *ordered* that the rates herein authorized shall become effective as of August 1, 1915, and shall be filed, posted, and published by the petitioner as provided by § 34 of the act to provide for the regulation of public utilities.

By order of the Commission this 22d day of July, 1915, dated at Springfield, Illinois.

KANSAS SUPREME COURT.

STATE EX REL. CASTER

v.

KANSAS POSTAL-TELEGRAPH-CABLE COMPANY.

[No. 19,766.]

(— Kan. —, 150 Pac. 544.)

Service — Telegraph — Power of Commission — Abandonment of station.

1. The Public Utilities act (Laws 1911, chap. 238), and related statutes, have conferred upon the Public Utilities Commission the power to determine whether a telegraph station, long established and maintained, should be abandoned.

Service — Telegraph — Governmental supervision — Abandonment of station.

2. The power thus granted is a valid exercise of governmental supervision, and does not contravene any provision of either the national or state Constitution.

Service — Telegraph — Station maintained at loss — Permission to discontinue.

3. Where a telegraph company maintained a telegraph station for a number of years at an average deficit of $134.33 per annum, it should have applied to the Public Utilities Commission for permission to discontinue it, and it was unlawful to close the station and quit business thereat until such permission was granted.

Service — Telegraph — Statute requiring station superseded by Public Utilities act.

4. Section 1796 of the General Statutes of 1909 (Laws 1893, chap. 152, § 1) is largely superseded by the Public Utilities act and other related statutes enacted since 1893.

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Service — Telegraph — Power of Commission — Discontinuance of station at county seat.

5. Section 1796 of the General Statutes of 1909 (Laws 1893, chap. 152, § 1), requiring each telegraph company to maintain an office in the county seat of each county when its lines run through such county seat, does not limit the power of the Public Utilities Commission to determine whether such office is self-supporting and compensatory, nor prevent the Commission from relieving the telegraph company of that duty, if its enforced maintenance would violate any provision of the national or state Constitution, or be otherwise unduly burdensome, unreasonable, or oppressive.

[July 10, 1915.]

Headnotes by the COURT.

APPLICATION by the State, through one of its authorized officers, to the Supreme Court of Kansas for a writ of mandamus directing the Kansas Postal-Telegraph-Cable Company to re-establish and maintain its telegraph station at Syracuse. Temporary writ ordered to issue unless defendant, within thirty days, files application with the Commission for formal leave to discontinue the station.

Appearances: H. O. Caster and A. E. Helm for plaintiff; Gage, Ladd, & Small, of Kansas City, Missouri, for defendant.

Dawson, J., delivered the opinion of the court:

The state of Kansas, through one of its authorized officers, invokes the original jurisdiction of this court, and asks for a writ of mandamus directing the Kansas Postal-Telegraph-Cable Company to re-establish and maintain its telegraph station at Syracuse, the county seat of Hamilton county. The company is a Kansas corporation, doing both domestic and interstate business. For several years it maintained a telegraph station at Syracuse; but finding that it was doing business at a loss, and that there had been a deficit in its receipts, as compared with its expenditures for five years last past, the company closed its office and quit business in that city on January 12, 1914.

The principal complaint of the state is that the company omitted to ask and obtain from the Public Utilities Commission an order permitting it to close its office and abandon its business at that point.

The company's answer to the alternative writ may be thus summarized: (a) Its business in Syracuse for the years 1909 to

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1913, inclusive, was conducted at a loss aggregating $671.68, an average deficit amounting to $134.33 per annum. (b) It made no application to the Public Utilities Commission for leave to close its office and discontinue its telegraph service at Syracuse, and that it never received the assent of the Commission so to do. It avowed that it will not restore that service voluntarily. (c) The public are adequately served at Syracuse by the Western Union Telegraph Company and the Syracuse Telephone Company. (d) "This defendant avers that it is and always has been characteristic of the management of any telegraph business, such as that of this defendant, to open temporary and experimental offices in different cities and towns, in order to determine whether the business of such offices will be compensatory; that this is also true in the case of branch offices in cities, and that such offices are opened and closed and reopened, as the case may be, with frequency, depending upon the volume of the business and whether it justifies the continued maintenance of the office, and also depending upon the fluctuations of the business, which sometimes increases and sometimes decreases." (e) That to require the company to re-establish its station at Syracuse and continue to do business at a loss would violate the 14th Amendment. (f) That to compel the company to re-establish and maintain its station at Syracuse until the Commission gives sanction to its discontinuance would be an unlawful interference and burden upon interstate commerce, and violate § 8 of article 1 of the Federal Constitution, and violate the Bill of Rights of the Kansas Constitution.

To this answer the state filed a demurrer, which we will treat as a motion to quash or as a motion for judgment on the pleadings. The state contends: (1) That defendant had no right to discontinue its service at Syracuse without first having obtained the sanction of the Public Utilities Commission. (2) That § 1796 of the General Statutes of 1909 requires the maintenance of a telegraph station at Syracuse, since that city is a county seat. A third contention in the state's brief was that, notwithstanding the deficit in operating the telegraph station at Syracuse, the company should be required to maintain it, unless it could be shown that the entire intrastate business of the company was operated at a loss; but, ere the oral argument was reached, certain decisions of the Supreme Court of the United States were handed down.

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which abrogated that doctrine, and it was abandoned. Northern P. R. Co. v. North Dakota, 236 U. S. 585, 59 L. ed. —, L.R.A. —, P. U. R. 1915C, 277, 35 Sup. Ct. Rep. 429. See also Union P. Railroad Co. v. Public Utilities Commission, 95 Kan. 604, 148 Pac. 667, 671, syl. par. 3.

The defendant telegraph company makes the counter contentions: (1) No state law required the defendant to obtain the consent of the Public Utilities Commission before discontinuing its service at Syracuse. (2) Section 20 of the Public Utilities act, as construed by plaintiff and applied to this case, is void. (3) Section 1796 of the General Statutes of 1909, requiring every telegraph company operating a line through any county seat in Kansas to maintain a telegraph station thereat, is void, as applied to Syracuse.

Before considering these specific points, it will be convenient to cite the pertinent statutes.

Section 7186 of the General Statutes of 1909 provides:

"Said Commissioners [the Board of Railroad Commissioners] shall have the general supervision of all railroads operated by steam or electricity or other motive power within the state, and all express companies, sleeping-car companies, and all other persons, companies, or corporations doing business as common carriers in this state; and shall inquire into any neglect or violations of the laws of this state by any person, company, or corporation engaged in the business of transportation of persons or property therein, or by the officers, agent, or employees thereof; and shall also from time to time carefully examine and inspect the condition of each railroad in the state, and of its equipment, and the manner of its conduct and management with reference to the public safety and convenience: Provided, This section shall not be construed as applying to street railway or electric lines operated wholly within one county."

Section 7188, id., reads:

"Whenever in the judgment of the Board of Railroad Commissioners it shall appear that any railroad corporation or other transportation company fails in any respect or particular to comply with the terms of its charter or the laws of the state, or whenever in their judgment any repairs are necessary upon its road,

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or any addition to its rolling stock, or any addition to or change of its stations or station houses, or any change in its rates for transporting passengers or freight, or any change in the mode of operating its road and conducting its business, is reasonable and expedient in order to promote the security, convenience, and accommodation of the public, said Commissioners shall inform such corporation of the improvement and changes which they deem to be proper by a notice thereof in writing, to be served by leaving a copy thereof, certified by the secretary of the Board, with any station agent, clerk, treasurer, manager, or any director of said corporation, which notice shall state the time within which said improvements or changes are required to be made; and if such orders are not complied with within the time stated in said notice, the attorney for the Board shall forthwith file with the Commissioners a complaint in writing, praying for an investigation of said matter, which complaint shall be heard according to the provisions of this act as in other cases. . . ."

The Public Utilities act (Laws 1911, chap. 238) provides:

"Section 1. The Board of Railroad Commissioners of the State of Kansas is hereby constituted and created a Public Utilities Commission for the State of Kansas, and such Commission is given full power, authority, and jurisdiction to supervise and control the public utilities and all common carriers, as hereinafter defined, doing business in the state of Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority, and jurisdiction.

"Sec. 2. All laws relating to the powers, duties, authority, and jurisdiction of the Board of Railroad Commissioners of this state are hereby adopted, and all powers, duties, authority, and jurisdiction by said laws imposed and conferred upon the said Board of Railroad Commissioners, relating to common carriers, are hereby imposed and conferred upon the Commission created under the provisions of this act.

"Sec. 3. The term 'public utility,' as used in this act, shall be construed to mean every corporation, company, individual, association of persons, their trustees, lessees, or receivers, that now or hereafter may own, control, operate, or manage, except for private use, any equipment, plant, generating machinery, or any part thereof, for the transmission of telephone messages or for the

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transmission of telegraph messages in or through any part of the state. . . .

"Sec. 10. Every common carrier and public utility governed by the provisions of this act shall be required to furnish reasonably efficient and sufficient service, joint service and facilities for the use of any and all products or services rendered, furnished, supplied, or produced by such public utility or common carrier, and to establish just and reasonable rates, joint rates, fares, tolls, charges, and exactions, and to make just and reasonable rules, classifications, and regulations; and every unjust or unreasonable discriminatory or unduly preferential rule or regulation, classification, rate, joint rate, fare, toll or charge demanded, exacted, or received is prohibited and hereby declared to be unlawful and void, and the Public Utilities Commission shall have the power, after notice and hearing of the interested parties, to require any common carriers and all public utilities governed by the provisions of this act to establish and maintain just and reasonable joint rates wherever the same are reasonably necessary to be put in, in order to maintain reasonably sufficient and efficient service from such public utilities and common carriers. . . .

"Sec. 14. Upon a complaint . . . that any regulation, practice, or act whatsoever affecting or relating to any service performed or to be performed by such public utility or common carrier for the public, is in any respect unreasonable, unfair, unjust, unreasonably inefficient, insufficient, unjustly discriminatory, or unduly preferential, or that any service performed or to be performed by such public utility or common carrier for the public is unreasonably inadequate, inefficient, unduly insufficient, or cannot be obtained, the Commissioners shall proceed, with or without notice, to make such investigation as they may deem necessary. The Commissioners may, upon their own motion, and without any complaint being made, proceed to make such investigation. . . .

"Sec. 16. If upon such hearing and investigation the rates, joint rates, fares, tolls, charges, rules, regulations, classifications, or schedules of such common carrier or public utility governed by the provisions of this act, are found to be unjust, unreasonable, unfair, unjustly discriminatory, or unduly preferential, or in any wise in violation of the provisions of this act, or of any of the

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laws of the state of Kansas, the Public Utilities Commission shall have the power to fix and establish, and to order substituted therefor, such rates, joint rates, fares, tolls, charges, rules, regulations, classifications, or schedules as it shall find, determine, or decree to be just, reasonable, and necessary; and if it shall be found that any regulation, practice, or act whatsoever, relating to any service performed or to be performed by such public utility or common carrier for the public in any respect unreasonable, unjust, unfair, unreasonably inefficient, insufficient, unjustly discriminatory, or unduly preferential, or otherwise in violation of any of the provisions of this act, or of any of the laws of the state of Kansas, the Public Utilities Commission shall have full power, authority, and jurisdiction to substitute therefor such other regulations, practice, service, or act as they find and determine to be just, reasonable, and necessary. All orders and decisions of the Public Utilities Commission whereby any rates, joint rates, fares, tolls, charges, rules, regulations, classifications, schedules, practice, or acts relating to any service performed or to be performed by such public utility or common carrier for the public are altered, changed, modified, fixed, or established, shall be reduced to writing, and a copy thereof, duly certified, shall be served on the public utility or common carrier affected thereby, by registered mail; and such order and decision shall become operative and effective within thirty days after such service, and such public utility or common carrier shall, unless an action is commenced in a court of proper jurisdiction to set aside the findings, orders and decisions of said Public Utilities Commission, or to review and correct the same, carry the provisions of said order into effect. . . .

"Sec. 20. Whenever any common carrier or public utility governed by the provisions of this act shall desire to make any change in any rate, joint rate, toll, charge or classification or schedule of charges, or in any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier, such public utility or common carrier shall file with the Public Utilities Commission a schedule showing the changes desired to be made and put in force by such public utility or common carrier, and such changes shall be plainly indicated by proper reference marks in amendments or supplements to existing tariffs, sched-

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ules, or classifications, or in new issues thereof. No change shall be made in any rate, toll, charge or classification or schedule of charges, joint rates, or in any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier, without the consent of the Commission, and within thirty days after such changes have been authorized by said Public Utilities Commission, then copies of all tariffs, schedules and classifications, and all rules and regulations, shall be filed in every station, office, or depot of every such public utility and every common carrier in this state, for public inspection. . . .

"Sec. 41. The provisions of this act and all grants of power, authority, and jurisdiction herein made to the Commissioners, shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of this act are hereby expressly granted to and conferred upon the Commissioners."

[1–3] It will be seen from the foregoing statutes that the legislature has promulgated a comprehensive program for the regulation and control of public service corporations. The Public Utilities Commission, succeeding to all the powers conferred upon the State Board of Railroad Commissioners, and by its own enlarged powers conferred by later enactments, has power to supervise the conduct of public service corporations in this commonwealth. It may order improvements in the public service where conditions so demand. State ex rel. Taylor v. Missouri P. R. Co. 76 Kan. 467, 92 Pac. 606; Missouri P. R. Co. v. Kansas, 216 U. S. 262, 54 L. ed. 472, 30 Sup. Ct. Rep. 330; State ex rel. Dawson v. Parsons Street R. & Electrical Co. 81 Kan. 430, 28 L.R.A.(N.S.) 1082, 105 Pac. 704; Missouri P. R. Co. v. Railroad Comrs. 85 Kan. 229, 116 Pac. 896; State ex rel. Dawson v. Chicago, B. & Q. R. Co. 85 Kan. 649, 118 Pac. 872. Likewise an unreasonable order, such as one requiring the erection and maintenance of a railway station where there was no need for a station, will be corrected on judicial review. Railroad Comrs. v. Missouri P. R. Co. 71 Kan. 193, 80 Pac. 53. The rates of gas supplied by a public service company cannot be changed without the consent of the Public Utilities Commission. State ex rel. Marshall v. Wyandotte County Gas Co. 88 Kan. 165, 127 Pac. 639; Wyandotte County Gas Co. v. Kansas, 231 U. S. 622, 58 L. ed. 404, 34 Sup. Ct. Rep. 226.

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Examining these statutes, which are all *in pari materia,* it will be noted that the Commission has power to inquire into any neglect or violation of law by a corporation engaged in the transportation of property. Gen. Stat. 1909, § 7186. The Commission is given authority over additions or changes of stations and changes in the mode of conducting its business. Gen. Stat. 1909, § 7188. It may be urged that, at the time of the enactment of this statute just cited, telegraph companies had not yet been specifically subjected to the control of the Commission. Conceding that, the language is significant, when read in the light of the later utilities act, the main purpose of which was to subject all public utilities to the same kind of control theretofore exercised over railroads.

Continuing this examination of later enactments, we find the Commission vested with full power, authority, and jurisdiction to supervise and control the public utilities and common carriers, and empowered to do all things necessary and convenient for the exercise of the power, authority, and jurisdiction. That is to say, whatever power is necessary to the effectual exercise of the specific powers conferred is likewise conferred. Utilities act (Laws 1911, chap. 238, §§ 1, 41). And § 2 of the Utilities act virtually extends the power already given over railroads to all public utilities. Section 3 defines a public utility and specifically names a telegraph company as such. By § 10 of the same act every common carrier and public utility is required to give reasonably efficient and sufficient service, and to make just and reasonable rules and regulations, and the Commission is given power to require reasonably sufficient and efficient service to be maintained. Section 14 provides that any regulation, practice, or act whatsoever affecting or relating to any service is subject to supervision and control by the Commission. Section 16 provides the procedure for changing the rules, regulations, practice, acts, etc., of the public utility companies, and is one of the many provisions for judicial review of the orders of the Commission. Section 20 also is quite pertinent. It provides that, if a public utility desires to change any rule, regulation, or practice, it shall apply to the Commission for leave to change such practice, etc. And no change in such practice, etc., shall be made without the sanction of the Commission. In view of all these, can there be any doubt of the

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duty of the defendant, before dismantling its station at Syracuse and abandoning its business thereat, to secure the approval of the Commission for such an important change in its mode of service? How is the Public Utilities Commission to discharge its important duties if the public service companies may quit business here, there, or anywhere in the state without an opportunity for the Commission to determine the propriety of such a course?

It is clear that, if the defendant may forego its business in Syracuse without the sanction of the Commission, it can close its office in Topeka, Wichita, or Kansas City, without the consent of the Commission. If this public utility, a telegraph company, can close one of its offices and quit business without the consent of the Commission, any other public utility, like the Santa Fé Railway, for example, could close its depot at Dodge City, Hutchinson, or Emporia without the consent of the Commission. Where would this end? If these utility corporations may abandon this particular service without the consent of the Commission, may they not take off their passenger trains, take up and abandon unprofitable branch lines, change the fares and rates of transportation for passengers and freight, or raise the charge for telegraph messages without the consent of the Commission? These questions answer themselves. To yield approval to the contention of the defendant is to concede that the state's program for the regulation and control of public service corporations is ineffective; that the public utilities act has been enacted in vain.

2. Neither do we discover the force of defendant's contention that § 20 of the Utilities act is void, as sought to be applied to this case. What is it but a fair exercise of governmental authority, a method of procedure prescribed by law for the effective supervision of defendant's public service business? Let it be granted, as the demurrer does concede, that the maintenance of a telegraph station at Syracuse is unprofitable. All that was necessary for the defendant to do was to make application to the Commission, setting up the facts. It would then be the duty of the Commission to verify the facts by proper investigation; and if the alleged facts were true, and no other lawful interest was materially affected, the Commission would be bound to grant the application. If the Commission failed to do so, the courts are open, and mandamus or other appropriate remedy would speedily

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redress the telegraph company's situation. But here the telegraph company gave the Commission no opportunity to investigate. Other cases may arise where it is a close and debatable question whether the telegraph station pays expenses and a fair profit. Moreover, it should be borne in mind that a public service corporation may, in a proper case, be required to establish and maintain reasonable facilities for the effective discharge of its self-assumed duties, even if the revenues derived therefrom will not always reimburse the corporation for the expenses incurred. Atlantic Coast Line R. Co. v. North Carolina Corp. Commission 206 U. S. 1, 51 L. ed. 933, 27 Sup. Ct. Rep. 585, 11 Ann. Cas. 398.

Shall the public service company determine this matter itself, and without any governmental check of any sort? No argument can be made for the defendant on its right to close its Syracuse station without consent of the Commission, which could not with equal force be made in favor of its right to make any other change in its methods of conducting its business in this state without consent of the authority vested by law with supervision of its business. Suppose its rates for telegrams are too low and unprofitable, could it raise these rates without applying to the Commission for permission to raise them?

We recognize that officers of public service corporations have viewed with great misgiving the extension of governmental power over their business which has come about in recent years. But this extension of governmental power, this public supervision by state and interstate Commissions has probably come to stay. Public service companies will have to reorder their affairs accordingly. These official Commissions have entered a new field of governmental activity. With time and experience they will take a broad and rational view of their duties and responsibilities. In time the public service companies will learn to trust these Commissions as fully as they do the courts. Indeed, these Commissions are equipped for the expeditious despatch of business in a manner which will be of great service to the public utility companies, and will supply a field which courts never were designed to fill. San Diego Land & Town Co. v. Jasper, 189 U. S. 439, 47 L. ed. 892, 23 Sup. Ct. Rep. 571; Minnesota Rate Cases

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(Simpson v. Shepard) 230 U. S. 352, 57 L. ed. 1511, 48 L.R.A. (N.S.) 1151, 33 Sup. Ct. Rep. 729.

Counsel for the defendant have furnished us an excellent brief. Their citations relate to decisions reviewing unreasonable orders of state Commissions. They may be valuable hereafter, and we note them here: Delaware, L. & W. R. Co. v. Van Santwood (D. C.) 216 Fed. 252; Washington ex rel. Oregon R. & Nav. Co. v. Fairchild, 224 U. S. 510, 56 L. ed. 863, 32 Sup. Ct. Rep. 535; Chicago, B. & Q. R. Co. v. Railroad Commission, 237 U. S. 220, 59 L. ed. —, P. U. R. 1915C, 309, 35 Sup. Ct. Rep. 560; Western U. Teleg. Co. v. Mississippi Commission, 74 Miss. 80, 21 So. 15; Chicago, R. I. & P. R. Co. v. State, 24 Okla. 370, 24 L.R.A.(N.S.) 393, 103 Pac. 617; Western U. Teleg. Co. v. State, 31 Okla. 415, 121 Pac. 1069. But all their arguments and citations amount only to this: If an application to the Commission had been made, and the facts developed as shown in defendant's answer, and if the Commission had denied the application, and the telegraph company had been compelled to ask relief from the courts, the brief of counsel would be very persuasive, and perhaps entirely convincing, that the Commission should be directed to grant the telegraph company's application, and relieve it from the burden of maintaining its unprofitable office at Syracuse. But we insist that the first official tribunal to have consideration of such matters is the Public Utilities Commission.

In State ex rel. Taylor v. Missouri P. R. Co. 76 Kan. 467, 486, 92 Pac. 606, 612, it was said:

"There is nothing substantial in the contention that the statute authorizes the court to try the whole controversy and make such orders as it may deem reasonable and just, and that the order, when reviewed and revised, becomes a judicial order. This court is not given authority by the act to make any rule, order, or regulation. Its authority is limited to the inquiry whether the order already issued is reasonable and just."

[4, 5] 3. There is another question in this case which needs attention, otherwise it might make some trouble in disposing of this controversy when it goes to the Public Utilities Commission. Section 1796 of the General Statutes of 1909 (Laws 1893, chap. 152, § 1) provides "that every telegraph company or other corporation operating a telegraph line through the corporate limits

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of any county seat in Kansas, is hereby required to establish and maintain a telegraph station at such county seat, with the usual facilities and appointments for the convenience of the public in sending telegrams during the business hours of each day."

Certain infirmities in this statute were pointed out in Western U. Teleg. Co. v. Austin, 67 Kan. 208, 72 Pac. 850. Some help in disposing of this question may also be drawn from reference to a number of important cases decided by the United States district court in this state in March, 1913, but not reported. These cases were Nos. 1390–1394, in equity, brought by the Santa Fé Railway and other railroads against the Public Utilities Commission, and against the attorney for the Commission (Mr. Justice Marshall), and against the writer, then attorney general. The railroads sought an injunction to restrain the enforcement of the maximum oil rate law. Laws 1905, chap. 353. The Public Utilities Commission resisted the application for an injunction, contending that the maximum oil rate law had been repealed by implication by the later enactment of the Public Utilities law; that, while the prevailing rates for transportation of oils could not be changed without the consent of the Commission, this was because of § 30 of the Utilities act, and not by any remaining potency in the maximum oil rate law of 1905. Adopting this contention of the Commission and the very able brief of Mr. Justice Marshall, then its attorney, the Federal district court (Honorable John C. Pollock) denied the injunction and dismissed the cases.

And so here. The telegraph company was required to maintain its station at Syracuse, not on account of any remaining potency in the act of 1893, but because the Public Utilities act of 1911 had entirely superseded it, and that act dealt with conditions as it found them at the time of its enactment, crystallizing those conditions, rates, service, regulations, and the like as they then prevailed, and made them subject to change, alteration, and amendment by order of the Commission. The necessary inference is that important changes materially affecting or likely to affect the convenience of the public were not to be made without the approval of the Public Utilities Commission, except as its orders might be corrected by the courts. We hold, therefore, that the act of 1893 will be no obstacle to the abandonment of the tele-

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graph company's office at Syracuse, if the Public Utilities Commission shall see fit, in the exercise of its sound discretion, and with due regard to the rights of the public and of the telegraph company, to sanction it. The powers of the Commission are no less comprehensive in dealing with telegraph service at county seats than elsewhere.

Mandamus is asked to restore the telegraph station. Mandamus is a discretionary writ. It does not in all cases issue as a matter of course. In this case, we think it proper to withhold it temporarily. The defendant will be given thirty days to file its application with the Commission for formal leave to discontinue its Syracuse station. Failing to file such application, a peremptory writ of mandamus will issue, directing the defendant to re-establish its telegraph station at Syracuse and to maintain that station until its discontinuance is sanctioned by the proper authority.

It is so ordered.

All the Justices concurring.

MICHIGAN SUPREME COURT.

CITY OF MONROE

v.

DETROIT, MONROE, & TOLEDO SHORT LINE RAILWAY.

[No. 312.]

(— Mich. —, 153 N. W. 669.)

Service — Street railways — Effect of franchise obligations.

The fact that a Commission has the power to regulate the service of a street railway company, notwithstanding the existence of a franchise requiring a certain number of cars to be run on a street railway, does not justify the company in ignoring the contract obligation and pleading the public or its own convenience as an excuse for nonperformance; and the company should therefore perform its contract obligations until relieved therefrom by competent authority.

[July 23, 1915.]

CERTIORARI to Circuit Court, Monroe County, to review a judgment for the plaintiff in an action in mandamus to compel the

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railroad company to operate cars during certain hours pursuant to the terms of its franchise. Judgment affirmed.

Appearances: A. B. Bragdon and Clifton Kolb, Willis Baldwin, of counsel, for relator; Thornton Dixon, Donnelly, Lyster, Brennan, & Munro, and Bernard F. Weadock, of counsel, for respondent.

Ostrander, J., delivered the opinion of the court:

The relator seeks the writ of mandamus to compel respondent to operate cars during certain hours, pursuant, it is claimed, to the terms of a franchise granted by relator to respondent and contract relations thereby established. After a hearing the circuit court ordered the writ to issue, and the respondent reviews the action by certiorari.

The order will be affirmed unless, as respondent contends, the relations established by the granting and accepting of the franchise have been so changed that the franchise has no longer any force in the premises. Respondent states its contention as follows:

"(a) The respondent is an interstate carrier engaged in the transportation of passengers from a point in the state of Michigan to a point in the state of Ohio, and therefore the attempt on the part of the city of Monroe to compel the operation of the cars from the city of Toledo, Ohio, to the city of Detroit, Michigan, or *vice versa,* is an interference with interstate commerce; that the power to regulate such interstate operations is reposed in the Interstate Commerce Commission by 'An Act to Regulate Commerce,' approved February 4, 1887, 24 Stat. at L. 379, chap. 104 (act June 29, 1906, 34 Stat. at L. 584, chap. 3591, Comp. Stat. 1913, § 8563, 3 Fed. Stat. Anno. 809), as amended, which act confers upon the Interstate Commerce Commission full and complete jurisdiction of all matters relative to the adequacy or inadequacy of interstate service rendered by this respondent.

"(b) That while the ordinance of September 22, 1902, may be fairly said, and it has been construed by this court, to be a contract between the city and the respondent, it is, nevertheless a contract subject to abrogation by operation of law. The contract of 1902 was entered into subsequent to the enactment of the interstate act, and therefore must be construed in the light there-

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of. The act reposes in the Interstate Commerce Commission all powers of regulation of interstate business.

"(c) That the contract of September 22, 1902, was made by the parties thereto by virtue of authority reposed in each of the parties by the laws of the state of Michigan. Such authority was conferred to the city of Monroe and to the respondent railway by the general railroad law of the state, which provided that the railway should obtain the consent, under such terms and conditions as the city might elect for operation on Monroe street in the city of Monroe. The municipality's power was a continuing power only so long as the state and state policy made it so. The charter of the respondent was a continuing charter only so long as the state or state policy made it a continuing charter. The state, in its wisdom and in pursuance of state policy, created in the year 1909, by public act 300 of that year, a commission known as the Michigan Railroad Commission, and the state reposed in such Commission broad powers relative to the regulation of carriers, subject to the jurisdiction of such Commission. Section 6526 of Howell, 2d ed., defines the carrier subject to the jurisdiction of the Commission, and embraced in such definition is the business of this respondent. By § 6527 of Howell every carrier is required to furnish reasonable and adequate service. The carrier failing to comply with such statutory demand may be compelled by the Railroad Commission, under § 6549 of Howell, 2d ed., to operate a reasonable service, and significant is the language of said section, which provides that any body politic or municipal organization which may deem service rendered it unreasonable or unjustly discriminatory may make complaint before the Railroad Commission.

"Public act 300 of the year 1909 is a revocation of any power that the city of Monroe may have had previous to that date to regulate the business of this respondent in regard to service."

Something concerning the relations of relator and respondent will be found in the opinion of this court in Atty. Gen. ex rel. Monroe v. Toledo & M. R. Co. 151 Mich. 473, 115 N. W. 422. It appears, also, from the petition of relator that the original franchise or franchises under which the streets of relator were invaded by a railway company were granted in 1899 and in 1900, and related to the operation of a street railway within the city,

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and that the franchises were used by the grantee, the Detroit, Monroe, & Toledo Short Line Railway, in constructing a line of railway from the city of Toledo, Ohio, to the city of Detroit, Michigan, through the city of Monroe. The road having been constructed and being in operation, there was, in September, 1902, a regranting of the original franchise, by the terms of which: "the cars or trains operated for the carrying of passengers shall be run as often as the common council shall direct, and as much oftener as the grantee, its successors, or assigns may see fit; provided that said council may not require them to be run oftener than once in every hour in each direction, between 6 o'clock in the forenoon and 11 o'clock in the afternoon. Between the hours of 11 P. M. and 6 A. M. the cars shall be run as the business interests of the people and the reasonable convenience of the public demand."

From some time in 1901 until in the winter of 1912–13 cars were run every hour from about 6 o'clock A. M. until 10 o'clock P. M., but in December, 1912, there was a refusal, or neglect, to run passenger cars between Detroit and Toledo which would pass through Monroe between the hours of 9 o'clock P. M. and 10 o'clock P. M. To this the city, by its council, made objection. In December, 1913, the respondent notified the city that thereafter it would not run a car either way between said hours. The city, by its council, passed a resolution requiring respondent to run a car each way between said intervals each day, in accordance with its franchise. The respondent restored the service, and continued it for a time, and again discontinued it. As cars were run when the petition was filed, between Detroit and Toledo, through Monroe, there is no local car going through Monroe to Toledo from 7:37 P. M. to 10:27 P. M., and none going north from Toledo, through Monroe, from 7:15 P. M. to 10:10 P. M., and none going south from 8:39 P. M. to 10:10 P. M.; the 8:39 P. M. car being a limited car making no stops for passengers from Detroit to Toledo, except at Monroe. There is a like limited car northbound at 8:20 P. M. The prayer of the petition is that respondent be commanded—"to forthwith run one passenger car each way between Detroit and Toledo, which cars shall pass through the city of Monroe not later than one hour after the last car prior going the same direction shall have passed through said

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city, and that said cars shall be what is called 'local cars,' stopping on signal at all crossroads, as were the cars taken off, and that such other order may be made in the premises as justice may require."

As was stated in the opinion above referred to—"by the terms of the ordinance the parties have agreed that a local passenger business in the nature of a street railway business may be done, and that the rate of fare shall be not to exceed 5 cents for a ride of any distance on the routes named within the city limits; that both parties to the agreements contained in the grants understood and expressly stated their understanding to be that the railways within the limits of the city of Monroe were to be an integral portion or part of the line of railway extending northerly to the city of Detroit; southerly to the city of Toledo, and by express agreement agreed to and fixed the rate of fare chargeable for passengers taking passage in the city of Monroe to both of the above points. The parties have acted upon these agreements."

The rule that contracts such as the one here involved are made subject to the necessities of police regulations is recognized by this court. But no exercise of the police power, affecting the contract, is pleaded. It does not follow that because the contract may yield to the exigency of public necessity, when such exigency has been determined in a proper case and manner, by competent authority, that the respondent, a party to the contract, may ignore the contract obligation, plead the public or its own convenience as an excuse, and remit the relator to a commission for relief. On the contrary, it seems wholly reasonable that it should perform its contract obligations until relieved therefrom by competent authority.

The judgment is affirmed, with costs to relator.

The late Justice McAlvay took no part in this decision.

P.U.R.1915E.

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NEVADA PUBLIC SERVICE COMMISSION.

PUBLIC SERVICE COMMISSION OF NEVADA

v.

WATER COMPANY OF TONOPAH.

[Case No. U-94.]

Service — Water company — Extensions — Earnings.

A water company was ordered to make certain extensions in order to supply prospective customers with water connections, where it appeared that the added income from the use of such service would amount to a return of from 30 to 36 per cent on the necessary investment.

[May 15, 1915.]

PROCEEDINGS to compel water company to extend its mains to supply certain prospective consumers with water connections; extensions ordered.

Appearances: J. F. Shaughnessy, First Associate Commissioner, W. H. Simmons, Second Associate Commissioner, W. K. Freudenberger, Chief Engineer, for the Commission; H. R. Cooke, Attorney, F. A. Burnham, Manager, for the water company; J. A. Sanders, District Attorney of Nye County, for the complainants.

Shaughnessy, First Associate Commissioner: Petitions in this case were filed at various dates by residents of Tonopah living on three different streets. Twelve residents on Magnolia street petitioned the Commission, under date of September 2, 1914, to require the water company to extend its mains along this street and furnish them proper connections and water service. Thirteen residents on California street filed a similar petition, under date of September 21, 1914. These petitions were combined. The case taken up by the Commission, upon its own motion, and the following citation issued:

[Form of citation omitted.]

Another petition dated March 13, 1915, was received by the Commission from eleven residents of Tonopah living on South street, also asking for water connections. This petition was combined with the other two, and all considered together.

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The case came on regularly for hearing at Tonopah, Nevada, April 15, 1915, and was completed the same day.

It was shown by a number of witnesses for complainants that all of the petitioners resided on streets alongside of, or crossing, streets supplied with water mains, and that the cost of extending the mains and making necessary service connections would be very moderate. The Commission's engineer, W. K. Freudenberger, was ordered to make an estimate of the probable cost of the necessary extensions, which he furnished at a later date, and is as follows:

Estimate of cost to extend pipe lines in Tonopah, on Magnolia, California, and South streets, and to make the several service connections asked for by petitioners.

Total length of 2-inch pipe required	3,000 ft.
Cost of 3,000 feet 2-inch pipe at 65 cents per foot, laid	$1,950.00
Cost of 800 feet of service pipe, laid	440.00
Total	$2,390.00

Mr. Burnham estimated that the total cost of the work on Magnolia and California streets would probably be $2,000, if a circulating system were maintained, but that he thought it could be done for $300 less by leaving a dead end, which method, he thought, would be satisfactory. He also testified that the length of new mains required on South street would be between 1,000 and 1,100 feet, and that it would cost about the same price per foot as the work on the other two streets,—namely, $1 per foot. Therefore, his estimate of the total cost would be about $2,800, which is not much different from the estimate made by the Commission's engineer.

It was also shown by witnesses for the petitioners that the probable average income per consumer per month to the water company would be about $2. If all these petitioners received service at $2 per month, the income per year from them would be $864. This income would amount to a return of 36 per cent on the necessary investment as given in Mr. Freudenberger's estimate, or a return of more than 30 per cent on the necessary investment as given in Mr. Burnham's estimate.

The increased operating expense incurred in serving these petitioners would be very slight, and, therefore, it is evident that the rate of return on the necessary investment is more than ample to

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justify the water company in making the extensions and service connections.

Mr. Burnham, as witness for the defendant, testified that the company had no funds with which to make the extensions asked for, but admitted that he thought it might be a good business proposition to make the extensions, if the company had the money to carry it out. From an examination of the earnings of the company for the nine months of June, 1914, to February, 1915, inclusive, we find that on a yearly basis, at the same rate of earnings, they will have earned 14 per cent net on the fair value of their property, taken at $350,000. It is therefore evident that the extensions can be easily made out of earnings.

Therefore, an order should be entered requiring the water company to make the extensions and service connections asked for by petitioners.

ORDER.

In accordance with the views expressed in the foregoing opinion, it is hereby—

Ordered that the Water Company of Tonopah proceed at once to extend its water mains along Magnolia, California, and South streets in the town of Tonopah, Nevada, and extend service pipes from these mains to the property lines of all the petitioners in this proceeding who desire such connections.

The period of sixty days, after the date of this order, is hereby named as a reasonable time within which the extensions and connections herein ordered shall be completed.

Public Service Commission of Nevada.

NEW JERSEY BOARD OF PUBLIC UTILITY COMMISSIONERS.

FARMERS' TRANSPORTATION ASSOCIATION, INC.

v.

PENNSYLVANIA RAILROAD COMPANY et al.

Service — Railroads — Operation of regular trains to meet special requirement.

1. A railroad company will not be required to operate a train to meet the special requirements of shippers of perishable farm products, P.U.R.1915E.

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where it does not appear that sufficient freight will be regularly offered to give reasonable assurance of operation without loss, and the shippers are unwilling to guarantee sufficient shipments to yield a reasonable return at the regular rates or to assume responsibility for the operation of the train as a special in event of light shipment.

Discrimination — Service — Operation of regular train to meet special need.

2. To enable the Commission to avoid discrimination in ordering, as a part of the regular freight service of a railroad, the operation of a train to meet the special requirements of shippers of perishable farm products, it should appear that such shipments would be sufficient in quantity to assure a reasonable return to the company at its regular tariff.

[July 12, 1915.]

COMPLAINT by the Farmers' Transportation Association against the Pennsylvania Railroad Company and the Adams Express Company as to the service rendered in transporting perishable farm products. Upon the complainant's refusal to accept the offer of the railroad company to run a train to meet their requirements on condition that when less than twenty cars were required the complainant would pay a bonus of $75 in addition to the regular rate for the products shipped, the Commission dismissed the petition with the suggestion that the railroad company make a particular effort to maintain the schedule of the train now used by the petitioner.

Appearances: L. A. Page and Edwin R. L. Collins for the complainants; Alan Strong for the Pennsylvania Railroad company.

By the **Commission**: The petitioners in this proceeding are fruit and produce growers in the Delaware river section of Burlington county, and are shippers of perishable farm products for the New York market. Their shipments are made by Pennsylvania Railroad to Jersey city. It is alleged that the schedule time for the running of the regular freight train for handling farm products is set at such an hour that the growers do not have time to gather more than half their day's output and deliver it to the various stations in time for forwarding by freight; that the freight train designated for carrying perishable farm products for the New York market also handles slow freight *en route;* that this occasions late arrivals at destinations, and consequently

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the produce must be sold in the New York market at lower prices than would be obtained if earlier deliveries were made.

It is further alleged that the Pennsylvania Railroad Company by a combination with the Adams Express Company forces the growers to the use of the express service.

Prior to filing formal petition, and as a result of conference between representatives of the association and the railroad company, which conferences were attended by an inspector of this Board, the railroad company agreed to operate a train at a time satisfactory to the petitioners, said train to arrive at an earlier hour than the regular freight train now arrives; the train to consist of twenty cars each day. The company insisted that when less than twenty cars were required to make up the train it should be regarded as a special, and the company should receive, in addition to the amount paid for transportation at the regular charges, a bonus of $75. The conditions under which the company offered this train were unsatisfactory to the petitioners, and the Board was asked to hold a hearing "for the express purpose of determining whether or not there is not produced in the river point section of Burlington county for shipment to Jersey City, in the months of June, July, and August, a sufficient amount of perishable farm products to warrant the Pennsylvania Railroad Company operating a freight train for the exclusive use of perishable farm products."

The Pennsylvania Railroad Company, in answer to the petition, claimed that the schedule time for the running of the regular freight train handling the products of the petitioner, compares favorably with schedules furnished for the movement of the same class of freight from other territories making deliveries in Jersey City, and it was claimed that, with very few exceptions, the scheduled service, during the last season, was maintained. It was denied that the "pick-up" perishable train handled any slow freight. Both the Pennsylvania Railroad Company and the Adams Express Company denied a combination forcing the petitioners or others to use express service.

On the petition and answer, hearing was held at which the petitioners and respondents were heard. It does not appear from the testimony adduced at the hearing that the operation of the freight train of which complaint is made is such as to justify a

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finding that the service is inadequate for freight carried at the regular rates applying for freight service. The transportation of commodities by railroad may be by regular or special trains. When transportation is by the latter, it is expected that payment in excess of the regular freight charges will be made.

Section 46 of "An Act Concerning Railroads" (P. L. 1903) reads:

"Any railroad company may charge for the transportation of express matter in packages weighing less than 100 pounds each, or the value of which exceeds $1 per pound, or of property forwarded in passenger or special trains . . . any rate not exceeding twice the rate such company is allowed to charge for the transportation of ordinary goods by their respective charters or the law of the state, . . ."

The common understanding of a special train is one run exclusively for the benefit of those who contract with the railroad company for its operation. Usually such a train is run because of some exceptional condition which the facilities regularly provided by the company do not meet. The exceptional condition does not concern the general public; it would not be reasonable to expect the railroad company to meet it without extra compensation.

The petitioners in this proceeding object to giving a guaranty of extra payment in the event of the produce offered requiring less than twenty cars for the train proposed, on the ground that the train will not be operated for their benefit exclusively. It is claimed that farmers not members of their association will ship by this train, that these farmers will receive the benefit of the special service without joining in the agreement to pay on days of light shipments an extra sum for the operation of the train.

The Board, of course, cannot require those who might receive a benefit from participation in a contract made by the Farmers' Association with the railroad to become members of the association and assume their part of its responsibility, if they do not care to do so.

[1] It seems to the Board, however, that the contention of the railroad company that it should not be required to operate a train to meet the special requirements of the petitioners, unless they

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agree to make extra compensation in the event of light shipments, is not unreasonable. The Board's position with respect to this would be different if it appeared that sufficient freight would be offered to give reasonable assurance of operation without loss. The Board has given consideration to the claim of the petitioners that the produce shipped by freight and express, and all of which it is alleged would be shipped by freight, is sufficient to assure a reasonable return to the railroad. It does not appear that this is a fact. Apparently the petitioners themselves are doubtful as to this, as they are unwilling to guarantee shipments to a twenty-car capacity daily, or assume responsibility for the operation of the train as a special. It does not appear that the operation of a train of twenty cars, with average loads of produce shipped at the freight charges therefor, would result in an unreasonable profit to the company.

It is claimed by the petitioners that it would be more reasonable to require payment of a bonus for light operation on a system of averages, rather than require payment, as for the operation of a special train, every day the shipments required less than twenty cars.

[2] There is doubt whether the Board could order the company to operate a train on this basis. As stated heretofore, the transportation of commodities by freight must be in regular or special trains, and the Board's judgment is that each train movement should be regarded as regular or special. Conditions might exist temporarily, where the Board would be justified in ordering the operation of a special train, and under such conditions it is the Board's opinion that it could fix a rate less than that prescribed by the general railroad act if such lower rate should appear to be just and reasonable. It seems to the Board that the rate in such a case would have to be above the regular freight charge and sufficiently in excess thereof to avoid such preference given the shippers as would amount to a discrimination in violation of the statute. As the complainants are unwilling to accept the railroad company's offer, it is not necessary for the Board to pass on the question whether an agreement such as the company proposed could be made effective without discrimination in favor of those who would not agree through the Farmers' Association

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to pay their share of the expense of operating the train as a special, but who would ship by this train.

The stations from which the petitioners ship are located within comparatively short distances of each other. The schedule on which it would be necessary to operate a train to meet the petitioners' requirements would not admit of its picking up freight after leaving Florence, the last station from which the petitioners ship. The company, therefore, would have no opportunity in operating the train to add to its revenue by shipments from other stations. Those shipping from the petitioners' stations would appear to be placed by the operation of the train in an advantageous position as compared with those shipping produce from stations between Florence and Jersey City.

To order this operation as a part of the company's regular freight service, with avoidance of discrimination against competitive shippers, and as a reasonable requirement of the company, it should appear that shipments from the petitioners' stations would be sufficient in quantity to assure a reasonable return to the company at its regular tariff. This does not appear to the satisfaction of the Board in the record before it.

While the record does not show such material and numerous delays in the operation of the train by which the petitioners ship as to justify a finding that the service now generally afforded is inadequate, it does appear that last season there were some delays in reaching Jersey City. A delay, comparatively brief, which in the transportation of ordinary freight would not injuriously affect shippers, may materially affect sales by the petitioners of their produce. The Board, therefore, recommends to the Pennsylvania Railroad Company that it make a particular effort to maintain the schedule of the train now used by the petitioners.

With the above recommendation the petition will be *dismissed.* An order will so enter.

Board of Public Utility Commissioners, Ralph W. E. Donges, President; John J. Treacy, John W. Slocum, Commissioners.

P.U.R.1915E.

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NEW JERSEY BOARD OF PUBLIC UTILITY COMMISSIONERS.

BELL ELECTRIC MOTOR COMPANY

v.

PUBLIC SERVICE ELECTRIC COMPANY.

Rates — Electricity — Lighting current from motor generator.

1. Service for an electric sign and for ordinary factory illumination, whether furnished directly from the mains of an electric company or through the medium of a motor generator set, should be charged for in accordance with the regular lighting schedule.

Rates — Electricity — Testing lamps.

2. Testing lamps used for testing coils and also for the illumination of a machine in which the coils are wound, the current for which is supplied by the motor generator set, need not be classed as lighting.

[July 27, 1915.]

COMPLAINT that respondent, an electric company, has notified the petitioner that the use of current from a motor generating set for lighting purposes will be discontinued unless arrangements are made to pay for current used by the motor at the regular lighting rate; dismissed.

Appearances: C. M. Coddington and P. Q. Oliver for the petitioner; L. D. H. Gilmour for the company.

By the Commission: In the complaint made by the Bell Electric Motor Company in this case before the Board, it appears that the petitioner is operating a factory at Garwood, New Jersey, using approximately 25 horse-power motors supplied with current by the Public Service Electric Company. Service is being paid for in accordance with the Standard Uniform Retail Power Rate.

In the construction of the product turned out by this company, it is necessary to use direct current for testing purposes, and, on this account, the petitioner has installed a direct current generator driven by alternating current motor, which in turn receives current from the Public Service Electric Company's line. The direct current is also used, in addition to testing, for a limited amount of battery charging and for electric lighting.

It was testified that, in addition to the motors installed, there was an electric sign on the roof of the building, and a number of

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lights used for testing coils, which were also used, however, for furnishing light at the machines at certain times. These lamps appear to be eleven or twelve in number, and, on account of the testing work, direct current was essential.

It was testified that the electric sign operated from dark until 11 or 12 o'clock at night, or, in other words, during the usual lighting hours.

Current for the sign and for the testing lamps was furnished from the motor generator set.

Complaint arises because the respondent has notified the petitioner that the use of current from the motor generating set for lighting purposes will have to be discontinued unless arrangements are made to pay for current used by the motor at the regular lighting rates.

The facts in this case are not in dispute, and it merely becomes necessary to pass upon the application of the rate schedules.

Rates for electric lighting service must take into account the effect which such service has upon the peak load of the plant.

The conditions governing rates have been gone into in considerable detail in a memorandum on the minimum charge for electric lighting issued by the Board in 1912. There it was stated that costs of furnishing all service readily fall into three general classes:

(1) Those which are proportional to the number of customers;

(2) Those which are proportional to the maximum demand made by the consumer at the time of the maximum load upon the plant;

(3) Those which are proportional to the number of kw. hrs. used.

The first class of costs is readily understood and amounts to approximately $10 or $12 per annum.

The proper proportion of the second class of costs to be charged against any particular customer will depend very largely on the time of day when such demand for service occurs.

It is well understood that the maximum demand or peak load upon the ordinary generating plant is caused by the lighting load. and rates of charge take into account the fixed charge based upon the capacity of the plant.

In the early days of the electric lighting industry, generating

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plants operated only from dusk to midnight, or at most from dusk to daylight the next morning. Later, electric current was sold for the operation of motors, and as the fixed charges were ordinarily covered in the rate charged for electric lighting, the rates charged for power used in ordinary daylight hours were less by the amount of the fixed charges.

As the electric power business has grown, the rates for electric lighting have been reduced, due to better operating efficiency and to the sharing of the fixed charges by the power customers, to a greater or less extent.

In no case, however, does it appear that the peak load upon the plant caused by the power has exceeded the peak caused by the lighting load.

It appears that the company has provided a special supplement to its regular power schedule, which allows a customer having more than 50 h. p. to supply themselves with light, providing the total lighting did not exceed 50 per cent of the connected load. (The total connected load is 21.5 h. p. [Test., May 25, 1915, p. 21]; the lighting load is about 3 kilowatts, or about $\frac{1}{8}$ of the total load.)

Clearly, the Bell Electric Motor Company does not come under the class of customers to whom the special conditions pertain.

[1] The only question remaining, then, is as to whether the charge for service supplied to the electric sign should be at the lighting rate or the power rate.

Testimony of May 26, 1915, p. 6, was to the effect that the sign was lighted about dark and runs until about 11 o'clock; that there were "possibly six or seven lamps" used for ordinary illumination, and that twelve girls were provided with leads for testing polarity.

It was further testified (p. 6) that the leads of the testing lamps are hooked together, and the lights used for illumination after dark.

To allow the Bell Electric Motor Company to obtain illumination service at power rates would be an unjust and undue discrimination against other lighting customers. Service for the electric sign and for the ordinary factory illumination, whether furnished directly from the mains of the electric company or

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through the medium of a motor generator set, should be charged in accordance with the regular lighting schedule.

[2] In view of the fact that direct current is necessary for testing out of coils, and that such testing is done at the machines where the coils are wound, it does not appear improper to utilize the same lamps for illuminating purposes, and under all the circumstances, the Board does not think it is requisite that the testing lamps be classed as "lighting."

It will be to the advantage of the Bell Electric Motor Company to have the sign and the ordinary office lighting supplied directly from the company's mains, and a separate meter should be installed by the company for this purpose, and current supplied through this meter charged for at the regular lighting rates.

The complaint is, therefore, *dismissed,* and an order to this effect will enter.

Board of Public Utility Commissioners, Ralph W. E. Donges, President; John J. Treacy, John W. Slocum, Commissioners.

NEW JERSEY COURT OF ERRORS AND APPEALS.

PUBLIC SERVICE GAS COMPANY

v.

BOARD OF PUBLIC UTILITY COMMISSION et al.

(— N. J. —, 94 Atl. 634.)

Certiorari — Gas — Rate order.

1. Certiorari to set aside an order of the Public Utility Commission, made in the exercise of a discretion, fixing the rate to be charged the public for gas, is the proper remedy of municipalities which claim that the order is erroneous in fixing too high a rate.

Valuation — Going value — Rate inquiry.

2. The going value of a gas utility should be allowed in valuing its property for rate-making purposes, to the extent that it represents the fair present value of all the elements of its intangible property, including the right under its franchise to use its property for the purposes of its incorporation and in the public streets where it is locally authorized to go, but excluding the commercial value of the franchise.

Valuation — Franchise — Effect of failure of state to regulate rate.

3. In valuing the property of a gas utility for rate-making purposes, no allowance can be made for the commercial value of a nonexclusive franchise, on the theory that the utility has a property right to con-

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tinue to charge high rates which have accorded a property value to the franchise, as reflected in the market value of its securities, as a result of the failure of the state to enforce its rights to regulate rates, since such failure does not preclude the state from fixing a lower reasonable rate.

Valuation — Franchise — Rate inquiry.

4. The fact that the charter right of a gas utility to charge reasonable rates sufficient to yield a net profit of 8 per cent on the value of its property is a valuable property right affords no ground for making an allowance for the commercial value of the nonexclusive franchise in ascertaining the value of the utility's property for rate-making purposes.

[June 14, 1915.]

REHEARING on appeal by a public utility company from a judgment of the Supreme Court affirming on its writ of certiorari an order by the Public Utilities Commission fixing the rates to be charged the public for gas; judgment affirmed.

The judgment of the supreme court dismissing writs of certiorari by municipalities as not being the proper remedy to obtain relief from the order was reversed and the order affirmed on their writs on a rehearing on their appeal. See post, P. U. R. 1915, — N. J. —, 95 Atl. 127. For former opinion on which rehearings were granted, see — N. J. —, 92 Atl. 606.

Appearances: Frank Bergen for appellant; George L. Record for appellees.

White, J., delivered the opinion of the court:

This case and the two city appeals (Nos. 3 and 4 of this term) present appeals by two municipalities, upon one side, and by a public utility company, on the other, from the judgment of the supreme court with respect to an order by the Public Utilities Commission fixing the rate to be charged the public for gas by the utility company in a district which includes the two municipalities.

[1] I am unable to agree with the supreme court that certiorari is not the municipalities' remedy in their cases. I know of no other remedy, and, of course, it cannot be that they have none. The Commission has fixed a rate of 90 cents, and the municipalities are dissatisfied with the order fixing that rate. They think the rate fixed is too high, just as the utility company thinks the rate too low. Neither can bring mandamus, because the Utilities

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Commission is vested by law with a discretion in fixing the rate. It would be like asking the court to mandamus or order a jury to agree upon a certain smaller named sum as its verdict in a case where a question of fact involving the amount of the verdict was to be decided. The verdict rendered might be too high or too low to accord with the legal principles governing the case; but, while a question of fact remains, a mandamus or a court direction is out of the question. The remedy is to set the verdict aside. So here the remedy is to set the Commission's order aside because erroneous, and the proper procedure to accomplish this is by certiorari, irrespective of whether the claim is that the rate fixed is too high or too low. I think, therefore, that the municipalities' cases cannot be dismissed upon the ground stated by the supreme court, and that, that court having in fact passed upon the facts involved, we should, as it seems to me, now consider these cases also upon the merits.

Two principal questions are involved in the cases before us: One, Was it improper to allow an element of "going value" in coming to a valuation of the property of the utility company to be protected in a rate-making order? And the other, Was it improper to exclude the element of the commercial value of the franchise (not an exclusive one) in reaching such valuation? The municipalities maintain the affirmative of the first proposition, and the gas company the affirmative of the second.

[2] Taking up the first inquiry: It is quite evident from the testimony and from the findings of the supreme court that, with the exception of the commercial value of the franchise, the term "going value" in these cases embraced what the Commission thought was the fair present value of all of the elements of the intangible property of the gas company, including the necessary spark of life represented by adequate permission to use its property for the purposes of its incorporation and in the public streets where it was locally authorized to go. To this extent I think the property of the gas company is entitled to protection in rate-making orders, because a failure of such protection permits confiscation. I agree, therefore, with the view of the Commission upon this point. To value the present mere physical property of the company in absolute disregard of its previously discharged burdens assumed and performed in the public interest and clearly

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contemplated by the legislation, by which it was invited to enter upon the public service, is, in my judgment, confiscatory. Likewise, to value it without considering it as endowed with its life-giving permission to continue its public functions would be confiscation.

I therefore favor an affirmance, upon the merits, of the order of the Commission in the cases wherein the cities of Paterson and Passaic complained that "going concern value" had been used as an element of value in establishing the rate.

[3] Coming now to the gas company's appeal, wherein the complaint is that an additional value of the franchise (apart from its life giving function to the company's other property), and dependent upon earnings present and prospective of the company, was not included, I incline to the opinion that the Commission took the proper view of this point also.

I take it that this claim must resolve itself into dependence upon one or both of two propositions, *viz.:* (1) That the gas company has a property right to continue to charge unreasonably high rates in the future because of the present market value of its securities as a result of its having been suffered to do so in violation of its charter obligations in the past; or (2) that its charter right to charge reasonable rates is of itself a valuable property right which must be permitted, under the guise of its own protection, to enlarge itself into a right to charge unreasonable rates.

Taking up the first of these propositions: It is not questioned that the universally acknowledged obligation of the gas company to serve the public at reasonable rates reserves to the public (the state) the right to regulate the rates to be charged so that they shall conform to this obligation. It follows as a necessary corollary that the franchise of the gas company to charge rates is at all times subject to this right of the state to so regulate them. That the granted franchise to charge rates is a property right protected by law, which cannot be destroyed or impaired, except by due process of law and upon compensation, and that it, as an element of property value (dependent in amount upon the rate permitted and likely to be permitted to continue), is subject to taxation, seems to me to be quite apparent; but that this fact should not be held to work a forfeiture of one of the conditions of the grant, *viz.*, that the state should have the right at all times to require

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that the rates charged shall be reasonable, seems to me to be equally clear. A man might build a hotel, 20 stories high, at the seashore, and so arranged that nearly half of its guest rooms have an unobstructed ocean exposure and view to the southwest over his neighbor's land, and the probabilities may seem to indicate that by reason of lack of demand for additional hotel accommodations, or inability, or lack of inclination, of the neighbor to build, this exposure and view would continue uninterrupted for a long time, and by reason of this advantageous exposure the hotel might be very profitable, so that it had a fair market value of $2,000,000. No one would doubt that it could not be condemned and taken by the state or the municipality for any public purpose without the owner being paid this market value, nor could he doubt that it was subject to be taxed at this value; but, on the other hand, no one would contend that the owner had thereby acquired a right to prevent his neighbor from building a like hotel, 20 stories high, on his own land, shutting off the ocean exposure and view of the first one, although the effect of his so doing would be to decrease the market value and the tax value of the first one by $1,000,000. If in fact the first hotel had been sold in the interim for $2,000,000, this circumstance would not in any respect alter the ultimate result.

So in the case of a gas franchise, subject, as here, to reasonable rate regulation by the state, it is quite evident that if the state for what reason soever (and many may be thought of) omits for a great number of years to enforce its rights, and thus allows the company to charge unreasonably high rates, and there seems every likelihood that this permission of omission would continue, the property value of the franchise in the open market, as reflected by the market value of the company's stock, would be much higher than it would be if the state had at all times and consistently enforced its rights, and there was every prospect that it would continue to do so. Assuming, for the purpose of illustration, that an unreasonably high rate has been charged by this company in the past, upon what theory can it be contended that, because of this permissive omission on the part of the state in favor of the company, during all these years the state has now forfeited the rights of the public to enforce a condition which it was always the duty of the company to perform, whether the state compelled

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it to do so or not? I think there is none. I suppose it may fairly be assumed that with all the other conditions exactly as they were in this case at the time of the order, if the rate charged by this company in the district in question before the order had been $1.40 instead of $1.10, the claim of the company to be allowed for value of franchise would have been at least double in amount what it now is, and that the higher property value, as indicated by market value of securities and by valuation of franchise for taxation, would have more than substantiated such enlarged claim. Clearly no part of such increase of claim could have any proper foundation for consideration in arriving at a just and reasonable rate, although it would have all the property right backing now urged for the present claim.

I think we may properly conclude, therefore, that the charging of unreasonably high rates in the past, if they have been so charged, can furnish no ground for the continuation of these rates in the future, and this although a shrinkage of commercial and taxing value of the franchise will be the result of the state's enforcement of its contract right to require the rates to be reasonable in the future.

[4] Taking up the second proposition, that the company's charter right to charge reasonable rates is in itself a valuable property right entitled to consideration in rate making, I suppose it must be conceded that the franchise to charge as a "reasonable rate," sufficient to yield a net profit of 8 per cent on the value of the company's property, as allowed and established respectively by the findings of the Utilities Commission in this case, is a very valuable property right. Certainly I think it is. That this valuable privilege is the company's is beyond question. That it is property is undoubted. That the law protects it against confiscation and subjects it to taxation follows as a matter of course. But that this valuable property right to charge "reasonable rates" should, by virtue of its own existence, have the effect of converting itself into a still more valuable property right to charge "unreasonable rates," is, of course, preposterous. Presumably the incorporators went into this public utility business because they expected that their charter privilege to charge "reasonable rates" for the gas they were to manufacture, distribute, and sell would be a valuable one, but that fact, and the fact that it has become so,

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cannot have the effect of altering the terms of the contract made with the state. The mere statement of this proposition is sufficiently convincing, but, if anything more were needed a glance at the absurd practical result of the contrary view would be illuminating. If the franchise to charge 90 cents in order to pay 8 per cent on the value of the company's property, not including the franchise, is worth $1,000,000, and must be included and have 8 per cent paid on it also, the rate would have to be $1 instead of 90 cents; but, if the company has the property right to charge $1, the franchise is worth $2,000,000 instead of $1,000,000, and so the rate must be $1.10 in order to pay 8 per cent on this additional million, and so on indefinitely.

That the company's contract with the state to charge "reasonable rates" cannot be thus evaded is, of course, quite obvious. The plain fact is that the commercial value of the company's property right in its franchise can have no effect in fixing the rate it can charge, because by the terms of its contract with the state the stream of its franchise value arises from the spring of its right to charge "reasonable rates," and in the very nature of things no stream can rise higher than its source.

For the reasons above stated, I concur in the affirmance of the judgment of the supreme court in the gas company's appeal.

Gummere, Ch. J., and Parker, Bergen, and Vredenburgh, JJ., dissent.

NEW YORK PUBLIC SERVICE COMMISSION, SECOND DISTRICT.

IN RE BUFFALO GENERAL ELECTRIC COMPANY.

[Decision No. 220; Case No. 4911.]

Consolidation, merger and sale — Authorization — Condition.

Upon the merger of an electric company which had sold electricity principally at wholesale, into another company which had previously sold electricity at retail, purchasing its supply from the first company, the latter company was authorized to issue securities for the outstanding stock of the first company and to guarantee the payment of the interest on its bonds, the companies being required to write off a substantial portion of the intangible value represented by the stock of the

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merged company which had not been issued for cash or an equivalent in property.

[June 24, 1915.]

APPLICATION by two electric companies for permission to merge or consolidate and for the issue of securities to effect the merger; granted upon condition that the companies write off a substantial portion of the intangible value represented by the stock of one of the companies which had not been issued for cash or an equivalent in property.

Appearances: Kenefick, Cooke, Mitchell, & Bass (by Mr. Kenefick) for the petitioner; Norton, Penney, Spring, & Moore (by Mr. Penney) for International Railway Company; H. D. Sanders, Assistant Corporation Counsel, for the city of Buffalo; Henry W. Killeen, in person; Shire & Jellinek (by Mr. Cole) for George J. Meyer and certain other taxpayers of Buffalo; Clark H. Hammond for stockholders of Buffalo General Electric Company and the Cataract Power & Conduit Company; William Burnett Wright, Jr., for Central Council Business Men's & Taxpayers' Association; Frank C. Perkins, as a member of the committee from the Main Street Business Men's Association, the Connecticut Street Business Men's Association, and Central Council Business Men's & Taxpayers' Association.

Carr, Commissioner: This is an application of the Buffalo General Electric Company for permission to do the following things:

(a) To acquire, purchase, and hold the outstanding capital stock of the Cataract Power & Conduit Company;

(b) To issue certain bonds and stock for the purpose of acquiring the capital stock of the Cataract company;

(c) To guarantee the payment of the outstanding first mortgage bonds of the Cataract Power & Conduit Company dated January 1, 1897, aggregating $1,384,000;

(d) For consent to merge or consolidate the Buffalo General Electric Company and the Cataract Power & Conduit Company;

(e) For permission to operate the combined properties under the franchise of the Buffalo General Electric Company in accordance with the provisions of a resolution of the common council of the city of Buffalo adopted on January 20–25, 1915.

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The Cataract Power & Conduit Company has filed a separate petition joining in the application of the Buffalo General Electric Company hereinbefore referred to. A hearing on the matter was duly held in the city of Buffalo on May 24, 1915, at which time the companies, including the International Railway Company, the city of Buffalo, and other customers of the companies in the city of Buffalo and citizens of that city, were represented in person and by counsel.

On the hearing there was some opposition to the proposed merger or consolidation, on the ground that the interests of the city had not been properly protected. Under the provisions of the franchise under which the Cataract company is operating, it had no authority to transfer or assign the franchise, or to consolidate or merge with any other corporation, without the consent of the common council of the city of Buffalo. This franchise was to run for thirty-six years from the date of its acceptance by the company to which it was issued, to wit, the Niagara Falls Power Company, and it was accepted by that company on January 14, 1896. This was thoroughly discussed in the rate case, 3 P. S. C. R. (2d Dist. N. Y.) 656.

The petition sets forth that the Buffalo General Electric Company has for some time been negotiating for the purchase of the stock of the Cataract Power & Conduit Company so as to effect a merger or consolidation of the two companies, and that options have been secured for the purchase of more than two thirds of the stock at a price of not less than $140 nor more than $145 per share, dependent upon the net value of the liquid assets of the Cataract company as the same existed on December 1, 1913, and at that time the liquid assets amounted to approximately $41 per share on the capital stock of the Cataract company authorized and outstanding. Incidental to this merger application, these two companies have filed petitions in case No. 2590, seeking certain modifications of the orders made by this Commission in the rate case under date of April 2, 1913, and June 18, 1913. A careful investigation of the franchise situation as regards the Cataract company would seem to indicate that all of the rights of the city under that franchise have been thoroughly protected and safeguarded in the modifications which have been made by the resolution of the common council hereinbefore referred to author-

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izing the merger or consolidation of the companies, so that it is apparent to the Commission that the city has not been placed at any disadvantage in case the merger should be permitted. We say this advisedly, because of the statements which were made on the hearing that the city officials of the city of Buffalo had signally failed in their duty to safeguard the interests of the city in all the negotiations which had extended for nearly a year between the city and the companies, looking to the adjustment of the rate situation in the city of Buffalo.

The situation of these two corporations in the city of Buffalo, while set forth at great length in the rate cases, may be again referred to briefly in this opinion. The electric energy which is used by these companies in the city of Buffalo is obtained from the Niagara Falls Power Company. At the time the rate cases were pending the Cataract Power and Conduit Company sold, and at the present time it sells, electric energy at wholesale, obtained from the Niagara Falls Power Company, in the city of Buffalo; and the Buffalo General Electric Company in turn sells electric energy which it purchases from the Cataract company, at retail in said city. In some instances the former company also does some business which might properly belong to the Buffalo General Electric Company when considering the sale of energy at retail as distinguished from wholesale. The Cataract company sells a large amount of its power to the Buffalo company, and in many respects it might properly be considered as the middleman in the sale and distribution of the electric energy generated by the Niagara Falls Power Company and sold in the city of Buffalo. As was stated in the opinion of this Commission in the Canadian-American Power cases (opinion No. 169, p. 9): "The Cataract Power & Conduit Company has no true economic place in Buffalo. The Buffalo General Electric Company or some other corporation should be the sole distributing company. The Niagara Falls Power Company, both Canadian and American, should sell power to that company at the lowest price consistent with expenses, investment, and maintenance." There is no reason why the business in the city of Buffalo cannot be handled as well by one company as two; and in fact it is the general experience that in situations of this sort it is undoubtedly better for all concerned, the public as well as the companies, if there is but one concern distributing electric energy in the community. Particularly is this

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true if the profits of the middleman are wiped out and the public is permitted to participate in the benefits thus obtained. While it is true that the two companies in question do not at the present time compete with each other to any extent, yet it may readily be imagined that a situation might arise whereby there would be severe competition between them which might create serious difficulties.

If the plan proposed is approved by this Commission, the Buffalo company will only issue new securities of equal par value to the $2,000,000 par value of the common stock of the Cataract Power & Conduit Company now outstanding. No additional bonds of the Cataract company will be issued, so that no increase in the outstanding securities of the companies will be made for the specific purpose of merging or consolidating the companies. The excess amount which the Buffalo company is required to pay to acquire the Cataract stock will be provided by the Buffalo company without issuing additional securities for that specific purpose. While the petitioner asks for the right to pay as much as $145 a share for the stock of the Cataract company, plus interest at 6 per cent from December 1, 1913, yet in view of the fact that the liquid assets of the Cataract company are only about $41 per share, the Buffalo company should be limited to a purchase price of $141 per share for all of the stock of the Cataract company. On this basis the Buffalo company would issue for the $1,005,000 of stock of the Cataract company held by the Niagara Falls Power Company, an equivalent amount of the first refunding 5 per cent gold bonds of the Buffalo company dated April 1, 1909, and would pay the balance of $41 per share plus interest on the purchase price in cash. Likewise, for the remaining outstanding stock of the Cataract company, the Buffalo company would issue similar bonds at par for a like amount of stock of the Cataract company; or if the holders of the stock of the Cataract company prefer so to do, they may accept common stock of the Buffalo company par for par, the balance of $41 per share with interest on the purchase price from December 1, 1913, to be paid in cash. The Cataract company has outstanding $1,384,000 of bonds, and the Buffalo company asks permission to guarantee the payment of the principal and interest of these bonds. Inasmuch as it may be assumed that the mortgage securing these bonds is a valid lien on the property of the Cataract company, which property is to be

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acquired by the Buffalo company subject to this mortgage, if the plan proposed is made effective there would seem to be no reason why the permission of the Commission should not be given to the Buffalo company to make this guaranty. The papers also show that a new power contract will be entered into with the Niagara Falls Power Company which will put the company formed by the merger in as good a position in respect to the purchase of power as the Cataract company now occupies, and this is undoubtedly of value to the companies.

Another ground of opposition at the hearing was the fact that the Buffalo company proposes to issue its securities in payment for the stock of the Cataract company; that this ought not to be done because the Commission had decided in the Cataract rate case that none of the stock had been issued for cash or an equivalent in property. There was no dispute as to this fact, and the books of the Cataract company clearly showed it. Notwithstanding this, it was strongly contended by the Cataract company that the rights obtained by the issuance of this stock did have a substantial value. However, the situation now presented is such that the Commission may properly require the companies, if this merger or consolidation is to become effective, to write off a substantial portion of the intangible value which represents the stock; and in the opinion of the Commission this can be accomplished to a very large extent by requiring as one of the conditions of the merger that this intangible value should be written off to the extent of $1,384,000, which is the amount of the par value of the bonds of the Cataract company now outstanding; and the order will so provide. If this is done, then all of the objection against the merger or consolidation which has been presented would seem to have been properly disposed of. The Commission, after having given careful consideration to all of the matters which have been presented to it for consideration in this case, is of the opinion that the petition of the Buffalo General Electric Company should be granted, as well as the petition of the Cataract company, and an order entered to that effect; and in the order the various conditions and restrictions set forth in this opinion should be properly covered.

Note.—In Fuhrmann, as mayor of the city of Buffalo against the Cataract, Power, & Conduit Company, Case No. 2590, Decision No. 219, June 24, 1915, the Buffalo General Electric Company made an

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application that the order of April 2, 1913 (3 P. S. C. R. [2d Dist. N. Y.] 739), which reduced its former rate approximately 25 per cent, should go into effect, and that an amendatory order of June 18, 1913, be modified to that extent; and the Cataract, Power, & Conduit Company asked that the order of April 2, 1913 (3 P. S. C. R. [2d Dist. N. Y.] 656), which reduced its rates, except for electricity furnished the International Railway Company, approximately 28 per cent, be modified so as to make a reduction of 19 per cent applicable to all customers including the International Railway Company. These applications were contingent upon the consent of the Commission being given to the proposed merger, as set out in IN RE BUFFALO GENERAL ELECTRIC COMPANY. In granting these applications, the Commission suggested that the Cataract Company take steps to put in force a simplified rate schedule which would eliminate all discrimination, and at same time result in a 19 per cent reduction in its revenues.

NEW YORK PUBLIC SERVICE COMMISSION, SECOND DISTRICT.

IN RE EMPIRE UNITED RAILWAYS, INC.

[Decision No. 223; Case No. 2533.]

Service — Street railways — Abandonment — Operation at loss.

The abandonment of a particular line of a street railway should not be permitted, merely because for the time being it is conducted at a loss.

[July 7, 1915.]

APPLICATION for approval of a declaration of abandonment of a portion of a line of street railway between the city of Oswego and the hamlet of Seneca Hill. Company not authorized to abandon line, at least until the construction of a bridge between Seneca Hill and Minetto should afford facilities to the residents of Seneca Hill to reach another line in operation between Oswego and Minetto.

Irvine, Commissioner: Many years ago there was constructed by a predecessor of the applicant a line of street railroad extending from the city of Oswego southward along what is known as the East river road, roughly parallel and to the east of the Oswego river, to a point near the hamlet of Seneca Hill. The line then passed upon private right of way to a point near the eastern end of a bridge across the Oswego river between the hamlet of Seneca Hill and the village of Minetto. The Syracuse, Lake Shore, &

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Northern Railroad Company, the immediate predecessor of the applicant, succeeded to the lines of street railroad in and near the city of Oswego, including the line in question, and it also constructed a line from Syracuse to Oswego, which passes through Minetto near the western shore of the Oswego river. Upon the opening of this line the travel from Minetto was diverted from the old line on the eastern shore, and an application was made in 1911 to the Commission for the approval of a declaration of abandonment of the line in question from a point opposite Riverside Cemetery to the original southern terminus. The Commission, by order made November 20, 1911, approved the declaration of abandonment from the point where the railroad entered upon private right of way to its southern terminus, and refused to approve the abandonment of the remainder of the line. The applicant having succeeded to the rights and obligations of the Syracuse, Lake Shore, & Northern Railroad Company, now applies for an approval of the declaration of abandonment of that portion of the line which the Commission refused to permit to be abandoned in 1911.

The traffic on this line is apparently considerably less than it was at the time of the former application. The operation is conducted at a loss to the company. Indeed, evidence submitted indicates that the entire operation within the city of Oswego is unprofitable, but it does not necessarily follow that abandonment of operation should be permitted because of this present condition.

The distance from the center of Oswego to Riverside Cemetery is about 2¾ miles, and the fare to that point is 5 cents; the distance from Riverside Cemetery to the present terminus is about 1¼ miles, and an additional fare of 5 cents is charged upon this portion. In this stretch the evidence shows that there are twenty-three houses along the highway or in sight. An inspection by the Commissioner who held the hearings disclosed seventeen houses in reasonable proximity to the railroad; five being grouped near the southern terminus and four not far from the cemetery, to which point the company proposes to continue operation. It is quite evident that this population, scattered over a distance of a mile and a quarter, is insufficient to justify the maintenance of the road. It is contended that residents along another highway to the east use the cars in going to and from Oswego. If so, they must drive or walk at least a mile and a half in order so to do.

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There is, however, a considerable hamlet at Seneca Hill south of the present terminus. The bridge between Seneca Hill and Minetto has been partly carried away by a freshet, and the only means of crossing the river at that point at present is by a temporary suspension footbridge, which may be safe, but is certainly very inconvenient. A new bridge is projected somewhat south of the present structure. When it shall have been constructed it will give convenient access to Minetto from Seneca Hill. The railroad on the Minetto side is much better than the line in question. A single fare is charged, and much better time is made. It will be practically as convenient for residents of Seneca Hill to reach the station in Minetto as to reach the present terminus of the line in question. Nevertheless, until this bridge shall have been completed the present East river road line will serve the people of Seneca Hill much better than the Minetto line, and we think that the present line should be operated at least until the completion of the new bridge. The line has not been well maintained, but the electric railroad inspector of the Commission reports that it has been maintained in condition for safe operation of the light cars in use at the low speed required. The cars have been operated in summer under twenty-minutes headway; and in winter, forty minutes. Some expense might be saved and adequate service still provided by operating the year round under forty-minutes headway, or even greater. The entire abandonment at this time should not be permitted.

OKLAHOMA SUPREME COURT.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY et al.

v.

STATE.

[No. 5730.]

(— Okla. —, 150 Pac. 108.)

Commissions — Jurisdiction — Form of order of test.

1. The jurisdiction of the Corporation Commission is not to be tested by the proposed order, but by the order made.

Headnotes by the COURT.

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Appeal and review — Failure of Commission to certify findings of fact — Effect.

By Const. art. 9, § 22, it is made the duty of the Corporation Commission, upon making an order that intrastate passengers on trains, desiring to continue their journey within the state beyond the station to which tickets are originally purchased, shall be permitted to pay the regular fare, and no penalty shall be collected in excess of the regular fare, unless the carrier gives them an opportunity to purchase a ticket at the station to where they were originally destined, to make findings of fact upon which the order is based, and, on appeal to this court from such order, to certify the facts found by it to this court. And where the Corporation Commission fails to make and certify such findings of fact, this court may, under said section of the Constitution, remand the case to the Commission, with directions so to do and to certify the same as stated.

[June 22, 1915.]

APPEAL by the Atchison, Topeka, & Santa Fe Railway Company and others, from an order of the Corporation Commission requiring railroads to permit passengers on trains coming into the state to pay the regular fare, and forbidding the collection of penalties in excess of the regular fare, unless given opportunity to purchase tickets to the points distant. Cause remanded with directions to the Commission to take additional evidence and to make findings of facts.

Appearances: Cottingham & Hayes, C. O. Blake, R. A. Kleinschmidt, Thos. B. Pryor, Edgar A. de Meules, C. E. Warner, C. C. Huff, Clifford L. Jackson, and W. R. Allen for appellants; Chas. West, Atty. Gen., and Chas. L. Moore, Asst. Atty. Gen., for the State.

Turner, J.. delivered the opinion of the court:

On September 21, 1913, the Corporation Commission served on the Atchison, Topeka, & Santa Fe Railway Company and fifteen other such companies doing business in the state notice of proposed order No. 133. The pertinent part of the notice reads:

You are hereby notified that the Corporation Commission of Oklahoma, at its office in Oklahoma City, Oklahoma, at 10 o'clock A. M. on the 13th day of September, 1913, will hear any objections which may be urged by any person interested against the following proposed order, rule, regualtion, and requirement.

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You and each of you shall stop all passenger trains for which tickets are sold for such trains, whether coming into or going out of the state of Oklahoma, a reasonable length of time to allow all passengers aboard such trains to purchase tickets for points in other states on outgoing trains, and for points within the state of Oklahoma on incoming trains.

In witness whereof, we have hereunto set our hands and fixed the seal of said Commission this 2d day of Sept., 1913.

Corporation Commission of Oklahoma,
J. E. Love, Chairman.
A. B. Watson, Commissioner.

Attest: Sam Houston, Acting Secretary. [Seal.]

After protests duly filed, there was evidence introduced before the Corporation Commission in support of and in opposition to the proposed order, and at the close of all the evidence the Corporation Commission entered order No. 757, the pertinent part of which reads:

This proposed order was heard on September 13, 1913, after due notice at which all railroads interested were represented and objection heard, which shows that all the railroads represented objected to the proposed order as outlined, because that would interfere with the interstate law. . . . It is not the desire of the Corporation Commission of Oklahoma to promulgate orders in conflict with the interstate laws, but to protect our passengers inside of the state.

It is therefore ordered that passengers on trains desiring to continue their journey within Oklahoma beyond the station to where tickets are originally purchased, shall be permitted to pay the regular fare, and no penalty shall be collected in excess of the regular fare, unless the carrier gives passengers an opportunity to purchase a ticket at the station to where they were originally destined.

This order to take effect after November 1, 1913.

Corporation Commission,
A. P. Watson, Commissioner.
Geo. A. Henshaw, Commissioner.

Attest: J. H. Hyde, Secretary. [Seal.]

Dated at Oklahoma City, this the 16th day of October, 1913.

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From said order the Atchison, Topeka, & Santa Fe Railway Company and nine of the protesting roads have appealed to this court, assigning for error that the same is void as an interference with interstate commerce.

While the proposed order may have been an interference with interstate commerce, such was not the effect of the order as made. The jurisdiction of the Commission is not to be tested by the proposed order, but by the order made. St. Louis & S. F. R. Co. v. Miller, 31 Okla. 801, 123 Pac. 1047. As the order was leveled at the practice, of at least some of the railroads, of exacting more than the regular fare from an intrastate passenger in transit to a point within the state beyond that mentioned in his ticket, without affording him an opportunity to purchase another ticket for that point at the regular fare, construing the order pursuant to the intent of the Commission not to interfere with interstate commerce, which intent is apparent on its face, we hold that when the order says, " . . . passengers on trains, . . . " it means intrastate passengers, and intends to correct the practice referred to when it provided that, when such passengers desired to continue their journey in the state beyond the station to which their tickets were originally purchased, no penalty should be exacted from them in excess of the regular fare, unless the carrier gives them an opportunity to purchase a ticket at the station to where they were originally destined. Thus construed, there is no merit in the contention that said order seeks to regulate interstate commerce.

But this cause must be remanded. This for the reason that, while the evidence before the Commission is before us, there is no finding of facts upon which the order appealed from is based certified to us, as required by article 9, § 22, of the Constitution. This being the state of the record, the cause is remanded to the Commission, with directions to take additional evidence should the Commission see fit so to do, and to find the facts upon which the order is based and certify the same to this court. Pioneer Teleph. & Teleg. Co. v. Westenhaver, 23 Okla. 226, 99 Pac. 1019; Atchison, T. & S. F. R. Co. v. State, 27 Okla. 820, 117 Pac. 330; Chicago, R. I. & P. R. Co. v. State, 24 Okla. 370, 24 L.R.A. (N.S.) 393, 103 Pac. 617.

All the Justices concur.

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RHODE ISLAND PUBLIC UTILITIES COMMISSION.

CHARLES H. McKENNA et al.

v.

THE NEW YORK, NEW HAVEN, & HARTFORD RAILROAD COMPANY.

[No. 10.]

Discrimination — Rates — Commutation ticket — Electrified branch of steam railroad.

A steam railroad which, upon electrifying one of its branches, had abolished upon that branch its existing commutation rates and inaugurated a zone system of fares, the regular steam railroad fares for the traveler with baggage being retained, was ordered to establish, in addition to the ex-rating zone and other rates of fare, general and pupil commutation rates, in order to avoid discrimination as between its different branches, there being nothing in the testimony to indicate that the application of the commutation rates would unreasonably reduce the earnings of the railroad on the branch in question.

[January 15, 1915.]

COMPLAINT against the New York, New Haven, & Hartford Railroad Company alleging that its rates upon one of its branches were discriminatory in that it did not offer commutation tickets for sale. The company was ordered to issue general and pupil commutation rates in accordance with a schedule prescribed by the Commission.

The appearances are set out in the opinion.

By the **Commission**: This is a complaint made by twenty-five qualified electors of the state, for the most part residents of the town of Barrington.

The substance of the complaint is "that the passenger rates, tolls, and charges of the respondent company, between the city of Providence and the town of Barrington, in respect to that class of passengers who use said railroad in going to and from their homes to their place of business, practically every business day in the year, and commonly called 'commuters,' are unreasonable and unjustly discriminatory," in that said company refuses to carry them as passengers at commutation rates, tolls, and charges on the Providence, Warren, & Bristol branch of its lines,

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notwithstanding the fact that said company carries like "commuters" at commutation rates, tolls, and charges on every other branch of its railroad within the state.

The respondent company in its answer denies that its passenger rates, tolls, and charges between said Providence and its stations in said town of Barrington in respect to the class of passengers who use said railroad in going to and from their homes to their place of business practically every business day in the year are unreasonable and unjustly discriminatory, but avers that said branch railroad alone of all the respondent's railroad lines radiating from said city of Providence enjoys, in addition to its regular rates of fare, a system of zone ticket fares, with an average low rate per mile, granting to each and every rider a low rate, without the necessity of purchasing tickets in large lots, and without limitation as to time or restriction as to the use by the purchaser alone.

The respondent also denies that it has refused to put into effect upon its said branch railroad to which the complainants refer as the Warren, Bristol, & Fall River line, a system of commutation rates, tolls, and charges for so-called commuters similar in principle to those which exist on other branches of its railroad radiating from said city of Providence; and avers that its representatives have expressed a willingness to inaugurate said commutation rates, tolls, and charges, provided that the present single fares, and also the zone ticket fares on said branch be replaced with the system of single ticket fares and commutation rates similar to those existing on other branches of the respondent's railroad radiating from said city of Providence.

The respondent avers that said branch railroad is a standard railroad operated by electric power between Providence, in the state of Rhode Island, and Fall River, in the commonwealth of Massachusetts, and intermediate stations, and between Warren on said branch and Bristol and intermediate stations in the state of Rhode Island; that the zone fare between Providence and Fall River of 25 cents and between Providence and Bristol of 20 cents, with the existing intermediate zone limits, gives an average low rate per mile; that said branch railroad is situated between two cities with less populous communities between; that

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in order to make possible the average low rate of fare which obtains on said line, it has been deemed necessary to consider the entire branch as a whole, and to establish thereon a system of fares and tickets calculated to induce travel between said cities, and thereby support frequent service by which the intermediate points on the line benefit, and to induce people who theretofore had made infrequent trips to ride more often, and thus produce a flow of traffic throughout the day.

The respondent states that it is advised, and therefore avers, that to retain upon said branch railroad its present zone system of fares which said branch alone enjoys, and at the same time to inaugurate thereon a system of commutation rates like those in effect on other branches of the complainant's railroad radiating from said city of Providence, would create discrimination against those using said other branches; and that the sentiment of the communities served by said branch as expressed to the respondent has been in favor of the present system and against the return to the system of fares on said other branches with a proper additional charge on account of the benefits enjoyed by the patrons of said branch and the large cost to the respondent of the tunnel route, so-called, into said city of Providence.

The respondent states that it has felt that the system of fares and tickets adopted on said branch gives general satisfaction to the communities served; and it would be reluctant at this time to go back to a system of fares and tickets similar to those obtaining on said other branches, with the higher rate per mile for the occasional rider and commutation rates for the passenger riding nearly every day.

Charles H. McKenna, Esq., appeared for the petitioner, and Nathaniel W. Smith, Esq., for the respondent company.

The Providence, Warren, & Bristol branch of the respondent was operated by steam up to about the year 1900, when it was electrified, and a zone system of fares was inaugurated, the regular steam railroad fares for the traveler with baggage being retained and the then existing commutation rates being discontinued.

The parties agreed for the purpose of the hearing upon distances and fares as follows:

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Distances.

	Miles.
Between Providence and West Barrington	7.77
" " " Nayatt	8.53
" " " Barrington	9.93
" " " Hampton Meadows	10.50
" " " Warren	11.57

and the other distances on the branch as shown on the respondent's time table No. 59 in effect March 2, 1913.

Regular Fares.

Between Providence and Bristol, Constitution Street	$0.35
" " " West Barrington	0.15
" " " Nayatt	0.20
" " " Barrington	0.20
" " " Hampton Meadows	0.20
" " " Warren	0.25

Zone Fares.

Between Providence and East Providence	$0.05
" East Providence and West Barrington	0.05
" West Barrington and Warren	0.05
" Warren and Bristol	0.05
" Warren and South Swansea	0.05
" South Swansea and Fall River	0.05

System of Fares.—It is agreed for the purposes of the hearing that on the branch between Providence and Bristol and Providence and Fall River there obtains a regular system of regular fares as shown by tariff on file with the Commission, and a system of zone rates as shown by the tariff, but without commutation rates; and that on the other lines of the respondent in Rhode Island there is a system of regular rates as shown by the tariff and a system of commutation rates as shown by the tariff, but no system of zone rates; and that on other lines there are various trip tickets between various stations as shown by the tariff.

A comparison of the rates paid upon this branch by passengers commonly known as commuters, with some of the rates paid by similar passengers on other lines of the respondent company, shows that the former are paying a much larger amount than the latter for transportation the same number of miles. It also shows that the absence of any special rate for students results in an even greater expenditure for such travelers on this branch.

Between	Miles.	General Rates. 60 Rides.	Pupils' Rates. 46 Rides.
Providence and Barrington	9.93	$9.00	$6.90
" " Apponaug	10.55	5.85	2.95
" " Stillwater	10.36	5.85	2.95
" " Pontiac	9.71	5.50	2.75
" " Ashton	9.50	5.50	2.75
" " Natick	9.00	5.15	2.60

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Between	Miles.	General Rates. 60 Rides.	Pupils' Rates. 46 Rides.
Providence and South or East Warren	12.20	$9.00	$6.90
Providence and East Greenwich	13.33	6.70	3.35
" " River Point	12.47	6.45	3.25
" " Attleboro	12.45	6.45	3.25
" " Smithfield	12.25	6.45	3.25
" " Centerville	12.10	6.45	3.25

Between	Miles.	General Rates. 60 Rides Monthly.	Pupils' Rates. 46 Rides Monthly.
Providence and Bristol	16.32	$12.00	$9.20
" " Mansfield	19.45	8.20	4.10
" " Wickford Junc.	19.36	8.20	4.10
" " Coventry	18.10	7.90	3.95
" " Woonsocket	16.38	7.30	3.65

If it is assumed that the passenger makes use of the sixty rides monthly permitted under the present form of commutation ticket, and his expense of transportation is compared with that of a passenger traveling the same number of miles on this branch, the results are as follows:

Between	Miles.	Monthly.		Yearly.	
		General.	Pupil.	General.	Pupil.
Providence and Barrington	9.93	$9.00	$6.90	$108.00	$82.80
" " Pontiac	9.71	5.50	2.75	66.00	33.00
Difference		$3.50	$4.15	$42.00	$49.80
Providence and South or East Warren	12.20	$9.00	$6.90	$108.00	$82.80
Providence and Attleboro	12.45	6.45	3.25	77.40	39.00
Difference		$2.55	$3.65	$30.60	$43.80
Providence and Bristol	16.32	$12.00	$9.20	$144.00	$110.40
" " Woonsocket	16.38	7.30	3.65	87.60	43.80
Difference		$4.70	$5.55	$56.40	$66.60

The respondent company asserts that the low average rate per mile which obtains should offset the lack of a commutation rate upon this branch. While the special conditions that prevail upon this branch seem to justify the establishment of a zone system of fares, yet we are of the opinion that the failure to provide for a commutation rate is an unjust discrimination against that class of travelers, known as "commuters," who make use of this line,

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when it is considered that such rates are established upon the steam roads of the respondent.

The respondent company has assumed that the only alternative to the present tariffs is to substitute therefor a system of commutation rates with the regular steam railroad rates of fare and the abolition of the present system of zone fares.

The evidence shows that this branch is profitable in operation under the present zone rates of fare. It does not appear clearly from the testimony what percentage of the passenger business upon this branch is what is known as commutation business. It appears that 7 per cent of the entire passenger receipts of the New York, New Haven, & Hartford Railroad are derived from such business. Witnesses for the respondent estimate that such business upon this branch might range from 10 to 20 per cent of the total passenger business. We are of the opinion that such business will not exceed 15 per cent of the total.

There is nothing in the testimony to indicate that the application of commutation rates would unreasonably reduce the earnings of the respondent upon this branch.

We are of the opinion that commutation rates of fare should be made applicable in addition to the existing zone and other rates of fare.

This branch has a large number of stations and stopping places. It is neither practicable nor fair, in view of the advantages of the zone system of fares enjoyed by the communities served, that a commutation ticket based upon the actual mileage between stations and stopping places should be provided. While it is true that this will continue as to some places some of the necessary inequalities existing in the case of zone tickets, yet the establishment of a commutation rate will result in a substantial decrease in the amount now paid for such service by the traveler. The commutation ticket will in a sense be a commutation between zones, and based upon the mileage between the extreme limits of such zones. The rate basis for such commutation will be similar to that for the other commutation tickets now generally used by the respondent. It should provide for a general sixty ride and a pupils' forty-six ride monthly ticket.

This will involve the selling by the respondent of commutation

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tickets between stations on this branch in Rhode Island at only six different rates.

Between	Miles.	Commutation Rate.	
		General.	Pupils'.
		Monthly 60 Rides.	Monthly 46 Rides.
(a) Providence and W. Barrington and stations north	7.77	$4.80	$2.40
(b) Providence and So. or E. Warren and stations north	12.20	6.45	3.25
(c) Providence and Bristol and stations north	16.32	7.30	3.65
(d) E. Providence and So. or E. Warren and stations north	10.22	5.85	2.95
(e) E. Providence and Bristol and stations north	14.34	6.90	3.45
(f) W. Barrington and Bristol and stations north	8.55	5.15	2.60

It appearing that a full investigation of the matters and things involved has been had, and that the Commission on the date hereof has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof; it is

(169) *Ordered* that The New York, New Haven, & Hartford Railroad Company be hereby notified and required to establish on its Providence, Warren, & Bristol branch line, so-called, within forty days of the date hereof, upon not less than three days' notice to the Commission and the general public, by filing and posting in a conspicuous manner in its stations, and in the manner prescribed in chapter 795 of the Public Laws of 1912, a schedule readjusting its rates and fares for the transportation of passengers between stations on said branch in the state of Rhode Island upon the following basis:

1. The existing zones and zone rate of fares, and the regulations concerning the same, shall be and remain as at present.

2. The company shall furnish a regular ticket for travelers with baggage based upon such rate per mile as may now or hereafter be regularly established on its main line.

3. The company shall sell a monthly season ticket between its stations as follows:

(a) Between Providence and West Barrington and stations

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north thereof and south of East Providence, based on the mileage between Providence and West Barrington, 7.77 miles, for a general sixty trip monthly ticket, $4.80, and for a pupils' forty-six trip monthly ticket, $2.40.

(b) Between Providence and South or East Warren and stations north thereof and south of West Barrington, based on the mileage between Providence and South and East Warren, 12.20 miles, for a general sixty trip monthly ticket, $6.45, and for a pupils' forty-six trip monthly ticket, $3.25.

(c) Between Providence and Bristol (Constitution street) and stations north thereof and south of South Warren, based on the mileage between Providence and Bristol (Constitution street), 16.32 miles, for a general sixty trip monthly ticket, $7.30, and for a pupils' forty-six trip monthly ticket, $3.65.

(d) Between East Providence and South or East Warren and stations northerly thereof and south of West Barrington, based on the mileage between East Providence and South or East Warren, 10.22 miles, for a general sixty trip monthly ticket, $5.85, and for a pupils' forty-six trip monthly ticket, $2.95.

(e) Between East Providence and Bristol (Constitution street) and stations north thereof and south of South Warren, based on the mileage between East Providence and Bristol (Constitution street), 14.34 miles, for a general sixty trip monthly ticket, $6.90, and for a pupils' forty-six trip monthly ticket, $3.45.

(f) Between West Barrington and Bristol (Constitution street) and stations north thereof and south of South Warren, based on the mileage between West Barrington and Bristol (Constitution street), 8.55 miles, for a general sixty trip monthly ticket, $5.15, and for a pupils' forty-six trip monthly ticket, $2.60.

William C. Bliss, Samuel E. Hudson, Robert F. Rodman, Commissioners.

Note.—By a supplemental report of the Commission dated January 21, 1915, the foregoing order was amended by striking out the first paragraph reading as follows: "1. The existing zone and zone rate of fares and the regulation concerning the same shall be and remain as at present."

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The railroad company asked that the order of the Commission should not require a permanent continuance of the zone system of fares, but that the question of the discontinuance of such zone system of fares be left open, to be raised, if necessary, should the respondent, after a fair trial of the commutation system, deem it necessary to file a tariff modifying such zone system of rates.

WEST VIRGINIA PUBLIC SERVICE COMMISSION.

TOWN OF MARLINTON
v.
MARLINTON SERVICE COMPANY.

[Case No. 62; Formal Complaint No. 29.]

Contracts — Franchise — Enforcement of provisions — Validity.

1. A franchise whereby an electric light and water company agreed to place and maintain fire plugs attached to its water main, and to erect and maintain lamps at such places as the corporate authorities should designate, constitutes a contract, and reasonable orders of the corporate authorities made in accordance with the provisions thereof should be enforced.

Construction and equipment — Pipe on river bed — Orders — Reasonableness.

2. The contention by a water company that an order of the corporate authorities that it lay a water pipe on the bed of a river is unreasonable because such pipes would be carried out by the ice, is disproved by the fact that a private water company maintains a line so located.

Evidence — Burden of proof — Reasonableness of order requiring extension of service.

3. The burden is upon a water company to prove that a request for an extension of service, made in accordance with the provision of the company's franchise, is unjust and unreasonable, and it will be granted where there is nothing in the evidence to show that the rates to be received for such extension service are not fair and adequate, and the presumption is clear that, if the extension is made, additional business would be secured by the defendant company.

Service — Extension — Location of lights and fire hydrants within territory covered by utility's charter.

4. The corporate authorities of a town are clearly within their rights in ordering a water company to place and erect lights and hydrants, and construct an extension of its services within territory wholly within the corporate limits of the town, where the franchise under which the utility is operated requires it to place lights and

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hydrants at such places as may be designated by the corporate authorities.

[July 28, 1915.]

APPLICATION that the Marlinton Service Company be required to comply with the orders of the town council of the said town of Marlinton with respect to extension of its lines, location of lights, and repairs to its water mains in said town of Marlinton; granted.

Appearances: A. F. Edgar for complainant; John L. Hochner for defendant.

Northcott, Chairman: On August 22, 1914, the town of Marlinton filed with the Commission its formal complaint, duly verified, alleging that the Marlinton Service Company, a corporation, engaged in the business of furnishing and supplying water and electricity at Marlinton, Pocahontas county, in the state of West Virginia, had failed to comply with the conditions and terms of its franchise, in that it had failed and refused to comply with certain orders of the town council of the said town of Marlinton; to wit, an order made by said town council on the 6th day of May, 1907, ordering the Marlinton Light & Water Company, to which company the defendant company was successor, to extend its water system across the Greenbrier river in said town, and to place and erect three fire hydrants on the west side of said river within the corporate limits of said town.

An order made by said town council on the 2d day of February, 1914, ordering the said defendant company to place and erect an incandescent electric light at the upper side of the alley at L. M. McClintic's office on Jury street, within the corporate limits of said town.

An order made on the 6th day of April, 1914, ordering said defendant company to place and erect an incandescent electric light on Ninth street between railroad crossing and Shoemaker's wareroom, within the corporate limits of said town.

An order made on the 6th day of April, 1914, by said town council, ordering the said defendant company to place and erect one water hydrant on the corner of the Lewisburg & Marlinton turnpike opposite Kelmenson's store on the west side of Greenbrier river, within the corporate limits of said town; and

An order made on the 3d day of August, 1914, ordering the

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said defendant company to stop leaks in its water mains on Tenth street, between Ninth and Tenth avenues, also the leak in its water mains at the corner of Camden avenue and Seventh street.

With this petition of the plaintiff was filed a copy of the franchise under which the defendant company operated.

On September 11, 1914, the defendant filed its answer, duly verified, denying that it or the Marlinton Light & Water Company, which it succeeded, had had any notice of the said order of the 6th day of May, 1907, and alleging that the order of the 2d day of February, 1914, of which it had not had notice until the 10th day of August, 1914, should not be obeyed because said light so ordered would only benefit one family, but further stating that it had ordered the material with which to put in said light, and that if the said town council insisted on placing the same it would erect said light at as early a date as possible; that the order of the 6th day of April, 1914, of which it did not have notice until the 10th day of August, 1914, should not be obeyed because said light at said point was unnecessary, but that the defendant had ordered the material, and would, as soon as possible after the arrival of same, erect said light; that the order of the 6th day of April, 1914, requiring the said company to erect a hydrant on the corner of Lewisburg & Marlinton turnpike, of which it had not had notice until the 10th day of August, 1914, should not be obeyed because of the fact that, in order to erect said hydrant, it would be necessary to expend not less than $1,200 to $1,500, and that its water main would have to be carried across Greenbrier river; that it was doubtful if a pipe could be held on the bottom of Greenbrier river on account of said bottom being composed of solid rock, and that in all probability it would be taken out by ice gorges; that the only other way it could be extended to the point in question would be to lay a pipe across the county bridge over Greenbrier river, which is an old wooden bridge, and that the defendant is informed that the county court of Pocahontas county was then getting ready to tear down the wooden bridge and place an iron bridge in its place, and that the respondent could not get permission to lay the pipe across said bridge until the new bridge was erected; that the water for domestic purposes on the west side of Greenbrier river was supplied by another company; that if the Marlinton Service Com-

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pany extended the main across the river and erected a hydrant, that it would only receive $25 a year for the use of said hydrant; that it was having a hard time to make ends meet, to supply water and light to the town of Marlinton, and could not afford to make long and expensive extensions.

The answer further denied that the defendant had failed and refused to stop water leaks in its water mains on Tenth street, as alleged in the petition, and concluded with the statement that the defendant was hard pressed to make ends meet, but that it was willing and anxious to do everything that was reasonable and proper in supplying said town with water and lights, and that, if required to extend the water mains and erect the lights, that it would make every effort to do so within a reasonable time.

Evidence was taken at the town of Marlinton on the 16th day of November, 1914, and a number of witnesses examined, A. P. Edgar appearing for the plaintiff, there being no appearance for the defendant; John Alexander, who, it seems, was an employee of the defendant company, appearing on behalf of the taxpayers of the town of Marlinton and on behalf of himself and other taxpayers.

A written brief was also filed by the attorney for the complainant, and the case was submitted on the 14th day of June, 1914.

[1] The franchise under which the defendant company is operating provides, among other things:

"Said Marlinton Light & Water Company shall place, set, and connect at all points, where required by the corporate authorities of said town of Marlinton, fire plugs properly connected to said pipes, mains, and water lines, for the use of said town in extinguishing fires and washing the paved streets of said town, and they shall be used for washing the paved streets not oftener than once a week, and they shall be used for no other purpose whatever except to extinguish fires. The said Marlinton Light & Water Company shall furnish the same complete and keep the same in proper repair, and the said town shall pay for the water in said plugs a sum not to exceed $25 per annum for each plug.

"Said Marlinton Light & Water Company shall also erect, place, set, and connect at all points designated by the corporate

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authorities of said town arc or incandescent electric lamps of such candle power as may be required by the town officers, for the use of which the said town of Marlinton is to pay to the said Marlinton Light & Water Company a sum not in excess of $5 for each sixteen candle power incandescent light so placed, and the sum of $100 per annum for each incandescent arc light of two hundred candle power, . . ."

Said franchise constitutes a contract between the town and the company, and no reason is shown why the foregoing quoted provisions should not be enforced and the said orders of the town council of Marlinton obeyed.

[2] The evidence shows that, while there is a water line on the west side of the Greenbrier river owned by the Bank of Marlinton, it also shows that this line is a private line not engaged in serving the public generally, and also shows that it is laid across the Greenbrier river, proving that the contention of the defendant that a water line could not be so laid is erroneous.

[3] There is nothing in this evidence to show that the rate received by the defendant company for its fire hydrants is not a fair and adequate one, and from the evidence the presumption is clear that if the water line was extended across the Greenbrier river, as ordered by the council, that additional business would be secured by the defendant company,—to what extent is not shown, but the burden is upon the defendant to prove that the request for this extension is unreasonable and unjust.

The evidence further tends to show that at least one of the leaks in the water mains of the defendant company have been repaired, and that some of the lights ordered in have been placed.

[4] It is admitted that all of the points designated by the council for the placing of lights and fire hydrants, and the territory included in the proposed extension of the water mains, are within the corporate limits of the town of Marlinton, and the town council of said town was clearly within its rights when it ordered the defendant company to place and erect said lights and hydrants and construct said extension.

The Commission, therefore, is of the opinion that the plaintiff is entitled to the relief for which it asks.

Dawson and Morgan, Commissioners, concur.

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CALIFORNIA SUPREME COURT.

EX PARTE CARDINAL.

[Cr. 1948.]

(— Cal. —, 150 Pac. 348.)

Constitutional law — Arbitrary classifications — Jitneys.

1. A municipal ordinance regulating automobiles known as jitney busses, engaged in the transportation of passengers on the public streets for a charge of 10 cents or less, is not an arbitrary classification of vehicles, because based on the fare charged; nor is it a discrimination against this species of vehicle; and such regulation is warranted by the Constitution.

Automobiles — Regulation of jitney busses — Operator to have experience.

2. A municipal ordinance requiring one to have thirty days' experience in the operation of an automobile in the city before being permitted to operate a jitney bus for the transportation of passengers on the public streets is not invalid as interfering with a right of a person to pursue a lawful calling, but is a reasonable exercise of the police power in the interest of public safety.

Automobiles — Regulation of jitney busses — Owner to furnish security.

3. A municipal ordinance requiring the owners of jitney busses engaged in the transportation of passengers to furnish security in the shape of a bond or an insurance policy, in a reasonable amount, to indemnify persons who may be injured or damaged by negligent or illegal operation, is a proper exercise of the police power for the protection of the public.

Automobiles — Requirement that owner of jitney furnish security in sum of $10,000 — Reasonableness.

4. A municipal ordinance requiring the owners of jitney busses engaged in the transportation of passengers to give a bond in the sum of $10,000 conditioned that he will pay all damage that may result to any person or property from the negligent operation or defective construction of the jitney bus, or from any violation of law; or to keep in force an insurance policy with a total liability of $10,000 insuring the owner against loss by reason of damage that may result to any person or property from the operation of the jitney bus,—is not unreasonable.

Automobiles — Requiring owners of jitney busses to file bond of surety company.

5. A requirement that persons engaged in the operation of jitney busses for the transportation of passengers shall furnish a bond given by a responsible surety company authorized to do business under the laws of the state, to the exclusion of personal sureties, is a valid provision.

[June 28, 1915.]

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In Bank. Petition for habeas corpus against the chief of police of San Francisco to inquire into the validity of a municipal ordinance regulating the operation of jitney busses; writ discharged and the petitioner remanded to custody.

Appearances: Jacob P. Wetzel for petitioner; Alexander O'Grady for respondent.

Angellotti, Ch. J., delivered the opinion of the court:

The petitioner is held in custody by the chief of police of the city and county of San Francisco under complaint charging him with a violation of ordinance No. 3212, N. S., in operating an automobile as a jitney bus on a public street in San Francisco without first procuring and giving a bond as required by § 4 of said ordinance.

It is contended that the ordinance as a whole is invalid, and, even if this be not so, that many of its provisions, especially § 4, under which petitioner is being prosecuted, are invalid.

The ordinance is purely regulatory in nature, one designed to regulate the use of what is termed the "jitney bus" on the public streets of the city and county of San Francisco. By § 1 of the ordinance, a "jitney bus" is defined to be "a self-propelled motor vehicle, other than a street car, traversing the public streets between certain definite points or termini, and conveying passengers for a fixed charge of not more than 10 cents between such and intermediate points, and so held out, advertised, or announced," and the same is declared to be a common carrier. The ordinance provides that, before operating any jitney bus on any public street, the owner or lessee shall apply for and obtain a permit from the Board of Police Commissioners, give a bond or provide a policy of insurance, and pay a certain license fee. The permit is to be granted upon an application showing certain things. There are numerous provisions as to the management and operation of such jitney busses; the ordinance being obviously, as we have said, purely regulatory in its nature.

[1] The first substantial objection made to the ordinance is that no proper basis can be found for an attempt to specially regulate the use of the kind of vehicle defined as a jitney bus; that the attempt here to regulate the use of the jitney bus in the manner prescribed, without including all other motor vehicles

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used on the streets, and especially those used for the carriage of passengers, is a discrimination against the so-called jitney bus that is not warranted under the Constitution. It cannot successfully be disputed that the city and county of San Francisco has the right, in the exercise of its police power, to enact such reasonable regulations for the safety of the public as are not in conflict with general laws, to regulate the use of vehicles on its public streets. While in doing this it may not arbitrarily discriminate against any species of vehicle, it may classify vehicles for the purpose of regulation in such manner as is reasonable, in view of the character and manner of use and the danger to the public to be apprehended, and such classification must be upheld by the courts unless it is manifestly unreasonable or arbitrary. No reasonable person will dispute the proposition that, in view of many circumstances peculiar to automobiles and their use, regulations specially applicable thereto will be sustained. And it is manifest that as to automobiles there may be circumstances existing, by reason of the manner and character of their use on the streets, that will warrant, in the interest of the safety of the public, special regulations as to those used for a particular purpose and in a particular way. The only limitation in the matter of any such classification is that the same must be reasonable—that there is some difference between the vehicles embraced in the class attempted to be created, and other vehicles, that bears a proper relation to the regulations prescribed for those coming within the class. If the classification is reasonable, including all that may fairly be said to be similarly situated and affecting alike all of those, there is no forbidden discrimination. The question of classification is primarily one for the legislative power, to be determined by it in the light of its knowledge of all the circumstances and requirements, the presumption in the courts is in favor of the fairness and correctness of the determination by the legislative department, and the courts are not privileged to overturn that determination unless they can plainly see that the same was without warrant in the facts. This is but a statement of well-settled doctrines applicable in considering such questions as the one before us. Applying them here, we entertain no doubt whatever as to the power of the board of supervisors of the city and county of San Francisco to make special

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regulations relating to the use on the streets of such vehicles as are described in § 1 of the ordinance, and therein termed jitney busses. It is argued that the charge of 10 cents or less for passage is no proper criterion by which to classify for such a purpose as that of this ordinance. It may well be, however, that the special danger to the public sought to be guarded against is confined to just the class of vehicles described, *viz.*, automobiles used on the public streets for the carriage of passengers at a very small charge, the same charge, or only a few cents in excess of the same charge, as that made on street cars. If this be so, it was necessary to specify some amount of fare as the dividing line, and it cannot be held that the supervisors acted unreasonably in fixing that amount at 10 cents. In legislating it is often necessary, for the purpose of definiteness and clearness, that some amount or number be specified as the dividing line, and the determination of the legislative body in that regard is practically conclusive, unless it be obviously unreasonable. It is the "low fare" automobile for the carriage of passengers on the streets of San Francisco that the ordinance is designed to regulate. The real question in this connection is whether there is sufficient distinction between the operation on the public streets of these "low charge" automobiles for the carriage of passengers and the operation of self-propelled motor cars on which a much higher charge is made, to warrant the imposition of the special regulations made by this ordinance. It is a matter of common knowledge on the part of those familiar with conditions in our large cities that the comparatively recent introduction of this class of vehicle, commonly known as the "jitney," for the carriage of passengers on the public streets, for a charge closely approximating that made on street cars, in view of the almost phenomenal growth of the institution, has made clearly apparent the necessity of some special regulations in order to reasonably provide for the comfort and safety of the public. It may well be that the board of supervisors concluded that, in view of the number of this class of public conveyances that were operated upon the public streets, especially upon the principal streets already occupied almost to overflowing during the hours of heaviest traffic by street cars and other vehicles, as well as by pedestrians at street crossings, the speed at which they would naturally be operated in order to make

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them pay on such a low rate of fare, and the probable lack of substantial financial responsibility on the part of very many undertaking to operate such vehicles, special regulations as to condition of car, competency and fitness of operator, and the operation of the car, as well as security to protect against improper or negligent operation, were essential to the public safety. We certainly cannot say that the legislative body was not justified in so determining.

[2] A provision of the ordinance is to the effect that it shall be unlawful for any person to operate a jitney bus on the streets "unless said person shall have had at least thirty days' experience in the operation of an automobile in the city and county of San Francisco," and other provisions considered in connection with this, may reasonably be construed as providing that the Police Commission shall not grant a permit to operate a jitney in the absence of such experience on the part of the operator. These provisions are asserted as unwarrantably interfering with the right of a person to pursue a lawful calling. If we assume their invalidity, it would not necessarily follow that the ..hole ordinance is void. But we do not think that they are invalid, for we cannot say that it is an unreasonable exercise of the police power in the interest of public safety to require that the operator of a vehicle of this character for the carriage of passengers on the public streets of a city like San Francisco should have the practical knowledge of the streets and grades of the city with reference to the use of automobiles thereon that it may reasonably be assumed can be acquired only by operating such a vehicle thereon. In view of the difference in the facts, we do not consider the case of Smith v. Texas, 233 U. S. 630, 58 L. ed. 1129, L.R.A.1915D, 677, 34 Sup. Ct. Rep. 681, as at all in point. As to the correctness of the principles enunciated in the opinion in that case there can be, of course, no dispute.

An examination of the ordinance discloses to us nothing that would warrant us in holding the ordinance as a whole to be invalid. We say "as a whole," for we are not called upon in this proceeding to do more than to determine, if the ordinance be a valid enactment at all, whether the particular provision that petitioner is charged with violating, *viz.*, § 4, is valid. We are not here concerned, for instance, with any question as to the

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validity of the provisions relative to the forfeiture of any permit granted. No attempt has been made to take away any permit from petitioner, and he is now in no way affected by any of these provisions. If invalid for any reason, which we must not be understood as conceding, they simply fall without affecting any other part of the ordinance.

[3, 4] We come now to the particular provision of the ordinance for an alleged violation of which petitioner is held, *viz.*, § 4. It is substantially provided therein that, "in order to insure the safety of the public," it shall be unlawful for any person to operate a jitney bus, unless there is given and in force either: (1) A bond of the owner or lessee of said jitney bus with a responsible surety company or association authorized to do business under the laws of the state of California, in the sum of $10,000, conditioned that the owner or lessee of "said jitney bus" "will pay all loss or damage that may result to any person or property from the negligent operation of or defective construction of said jitney bus, or which may arise or result from any violation of any of the provisions of this ordinance or the laws of the state of California;" or (2) a policy of insurance in a company authorized to do business in the state of California, with a total liability of $10,000, insuring said owner or lessee against loss by reason of damage that may result to any person or persons or property from the operation of said jitney bus, which policy shall guarantee payment, within the limits prescribed, *viz.*, an aggregate liability of $10,000, and a limitation of $5,000 for any one person killed or injured and one of $1,000 for the injury or destruction of any property, of any final judgment rendered against said owner or lessee. Other provisions are immaterial here.

We see no reason to doubt the power of the state, or any county or municipality, in the exercise of its police power of regulation, to require security in the shape of a bond or insurance policy from its licensees in all cases where the giving of such security may fairly be held to be a reasonable requirement for the protection of the public. If the power to do this exists, we are satisfied that it cannot properly be held by the courts that the requirement of such security by the ordinance before us was an unreasonable exercise of its power by the board of supervisors of San

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Francisco. In Freund on Police Power, it is substantially stated that a requirement of a bond to secure faithful compliance with police regulations and the satisfaction of liabilities that may arise from their violation, or to serve as an indemnity fund for persons who have suffered by the fraudulent conduct of the business, appears to be permissible, as a subsidiary measure of police control, wherever a license may be required by way of regulation. Section 40. The most common instance of the requirement of such a bond is probably that of the licensed liquor dealer, and a requirement that he give a bond for damages that may be caused third persons by illegal sales is declared valid. See Black, Intoxicating Liquors, § 46; Woollen & T. Intoxicating Liquors, § 149. In Wiggins v. Chicago, 68 Ill. 372, a requirement of a bond of $1,000 from a licensed auctioneer conditioned for a due observance of an ordinance regulating the business was sustained as a reasonable requirement. In Hawthorne v. People, 109 Ill. 302, 50 Am. Rep. 610, an act required of anyone operating a butter and cheese factory among the farmers of a neighborhood a bond, intended, as the court substantially said, to secure those who intrust their property to the keeping of the manufacturer against fraud or misappropriation by him of their property, just as the saloon keeper may be required to give security that he will not violate the law and thus inflict injury on his customers. The requirement was upheld. On principle it would seem that security for the protection of those who may be injured or damaged by the negligent or illegal operation of a business or calling subject to police regulation may be required, wherever such a requirement is not unreasonable; the requirement being, as already suggested, an exercise of the police power of regulation for the protection and safety of the public. We have found no decision that holds otherwise. Of course, no such interference with the right of a person to carry on a legitimate business would be valid except where justifiable as a proper exercise of the police power of regulation, and the decision in the case of People ex rel. Valentine v. Berrien Circuit Judge (People ex rel. Valentine v. Coolidge) 124 Mich. 664, 50 L.R.A. 493, 83 Am. St. Rep. 352, 83 N. W. 594, in which an act requiring all merchants who sell farm produce on commission to execute a bond in the sum of $5,000 conditioned for the faithful performance of their contracts was held

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to be unconstitutional, was put upon the ground that there was nothing in the particular business there involved that required regulation, as did hack drivers, peddlers, saloons, etc., but that the business was a legitimate commercial business, for the carrying on of which neither license fee nor bond could be required. Gibbs v. Tally, 133 Cal. 373, 60 L.R.A. 815, 65 Pac. 970, and the cases following it, are not at all in point. The statute there held invalid was one requiring the owner to give a bond to secure laborers, materialmen, and subcontractors, with whom he had no contract, against default on the part of their debtor, the building contractor. No foundation for the imposition of any such burden on the owner, who was entirely without responsibility, legal or moral, to those choosing to deal with the contractor, could reasonably be found. In the case at bar we have persons undertaking to pursue upon the public streets of the city and county of San Francisco an occupation that if negligently conducted is fraught with danger not only to those who may be passengers, but also to the public generally upon those streets. The occupation is one that may properly be regulated by the public authorities, and the insistence on a bond or other security in a reasonable amount to indemnify those who may be injured by the negligent or illegal operation of the business appears to us not to be beyond the range of reasonable requirement.

[5] It is suggested that the requirement that the bond be given by a responsible surety company or association authorized to do business under the laws of the state of California, to the exclusion of personal sureties, renders the provision invalid. We know of no constitutional right that one has to give any particular kind of security. A legislative body having the right to require the giving of security necessarily has the right to prescribe the kind that shall be given, with the limitation always, of course, that its provisions in this regard shall not be unreasonable, or based upon any other consideration than its conclusion as to what is necessary for the protection of those concerned. We had occasion, in San Luis Obispo County v. Murphy, 162 Cal. 588, 591, 123 Pac. 808, Ann. Cas. 1913D, 712, to consider an act providing for the payment by the state, county, etc., of the premiums on official bonds of state, county, etc., officers when those bonds were procured from such a company or association. The act was upheld

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against the objection that it discriminated in favor of such bonds and against bonds with personal sureties. As one of the grounds of decision, it was substantially said that the theory of the legislature probably was that the public interests would be better protected by such bonds, and that, taking into consideration the provisions of our law relating to the conditions and official supervision under which such surety companies are allowed to transact their business within this state, it might well be concluded that the surety company bond is a better and safer bond so far as the public interest is concerned. The likelihood of finding the security given insufficient from one cause or another when the time for collection arrives is obviously much greater in the case of the personal surety than in that of the company or association engaged in the business only with the certificate and under the constant supervision of officers of the state. Then, too, the necessity of giving and maintaining such a bond may well be considered as more conducive to a careful operation of his business by the jitney bus owner or lessee than would otherwise be had. We see no warrant for holding that the supervisors were not justified in concluding that such a bond as that prescribed in the ordinance was essential.

It is not claimed that the complaint does not sufficiently state a public offense, if § 4 of the ordinance is a valid enactment.

No other point is made against the ordinance that calls for discussion here. We are unable to perceive any ground upon which it may fairly be held that § 4 of the ordinance is not valid.

The writ is discharged, and the petitioner remanded to custody.

We concur: Shaw, J.; Melvin, J.; Sloss, J.; Lorigan, J.; Lawlor, J.

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CALIFORNIA SUPREME COURT.

MT. KONOCTI LIGHT & POWER COMPANY

v.

MAX THELEN et al.

[S. F. 7446.]

(— Cal. —, 150 Pac. 359.)

Rehearing — Hearing on before Commission.

1. A hearing on an application for a rehearing, at a time and place fixed by the Commission, when the matter was submitted for final decision on the merits of the controversy, is sufficient to warrant the Commission to dismiss the complaint and to vacate its former order, restraining an individual from constructing a hydroelectric system to compete with the complaining company, although the Commission is without authority to change or vacate a former order without giving the adverse party an opportunity to be heard.

Order — Time for making.

2. An order made more than twenty days after the final submission of the matter for decision on rehearing is not void by virtue of the provision of the Public Utility act that the Commission shall "hear the matter with all despatch, and shall determine the same within twenty days after final submission, and if such determination is not made within such time, it may be taken by any party to the rehearing that the order involved is affirmed," as the statute is merely directory as to the Commission, in no way going to its jurisdiction, and in so far as the parties are concerned simply authorizes them, pending final decision, to act without fear of penalty upon the assumption that the order is affirmed.

Rehearing — Jurisdiction and authority of Commission on.

3. The Commission does not exceed its authority or jurisdiction by vacating a former order and dismissing the complaint after a hearing upon an application for a rehearing when the merits of the controversy were submitted for final decision.

Monopoly and competition — Powers of Commission — Statute.

4. The provision of a statute (Cal. Public Utility act, § 50a) "that if a public utility, in constructing or extending its line, plant, or system shall interfere or be about to interfere with the operation of the line, plant, or system" of an established public utility, the Commission on complaint may make such order for the location of the systems affected as may be just, refers solely to an interference with the physical operation of the system of the public utility already constructed, and cannot be invoked by one utility to prevent another from extending its lines so as to be in a position to compete with it.

[June 22, 1915.]

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APPLICATION for a writ of Certiorari to review the proceedings of the Railroad Commission revoking its former order restraining an individual from constructing a hydroelectric system in competition with an established public utility and dismissing the complaint; denied.

Appearances: Wm. S. McKnight for petitioner; Douglass Brookman for respondents.

Angellotti, Ch. J., delivered the opinion of the court:

The proceeding before the Railroad Commission which it is sought here to review was one by the Mt. Konocti Light & Power Company, petitioner here, against James A. Gunn, Jr., complaining that Gunn was constructing his hydroelectric system from Kelseyville, Lake county, to the village of Finley, in the same county, the last-named village being territory not theretofore served by him, but already occupied by the power company, and was about to enter into competition with it there, and asking for an order restraining Gunn from so doing. It is assumed he had no certificate of public convenience and necessity from the Railroad Commission authorizing him to make such extension of his system. Public Utilities act, § 50. By his answer Gunn denied certain allegations of the complaint, and set up his right to do as he was doing by reason of a franchise granted by the supervisors of Lake county, under which he had commenced to do business before the effective date of the Public Utilities act. The Commission first made an order restraining Gunn as asked, but on his application for a rehearing, which, according to the petition here, was heard by the Commission at a time and place fixed by it, and finally submitted to it for decision on February 18, 1915, vacated and annulled this order, and dismissed the power company's complaint on May 5, 1915. This action was had on the theory that the Commission had no power to prevent Gunn from exercising the franchise given him by the supervisors of Lake county. The power company seeks from this court a writ of certiorari to review the proceedings of the Railroad Commission, with a view to the annulment of the second order of the Commission, the order vacating the first order and dismissing the complaint.

[1] It sufficiently appears from the petition and exhibits attached thereto that there was a hearing on the application for

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rehearing at a time and place fixed by the Commission, that the matter was finally submitted to the Commission for decision, and that such submission involved the determination of the rights of the respective parties on the merits of the controversy in the event that the Commission concluded that its original decision was erroneous. Under the circumstances no further hearing was essential or apparently desired. While in view of the language of the statute we might doubt the power of the Commission, if it grants an application for rehearing without an opportunity of a hearing to the adverse party, to make any change in the order already made without an opportunity to such party to be heard on the rehearing so granted at a time and place fixed, we are satisfied that, upon the showing made here, there was in the case at bar no substantial departure from the procedure provided by the act, no departure affecting any substantial right, or beyond the power of the Commission. There was, in effect, a hearing on the "rehearing."

[2] There is no force in the claim that the second order must be held void because made more than twenty days after the final submission of the matter for decision. The provision of the Public Utilities act relied on that, under certain circumstances, the Commission "shall forthwith proceed to hear the matter with all despatch, and shall determine the same within twenty days after final submission, and if such determination is not made within such time, it may be taken by any party to the rehearing that the order involved is affirmed," is simply directory so far as the Commission is concerned, in no way going to its jurisdiction, and, in so far as the parties are concerned, simply authorizes them, pending final decision, to act without fear of penalty upon the assumption that the order is affirmed.

[3, 4] As to the other points made in support of the application: The Public Utilities act in terms provides that "the review (by this court) shall not be extended further than to determine whether the Commission has regularly pursued its authority, including a determination whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of the state of California." We can see in the showing made in support of the application no ground for the claim that the Commission has not "regularly pursued its

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authority," or, in other words, has exceeded its jurisdiction, in vacating its first order and dismissing petitioner's complaint. Nor can we see any ground whatever for the claim that any right of petitioner under either the Constitution of the United States or the state of California is affected. The final proviso in § 50a of the Public Utilities act, relied on here, obviously has to do solely with an interference with the physical operation of the line, plant, or system of the public utility already constructed.

The application for a writ of certiorari is denied.

We concur: Lorigan, J.; Shaw, J.; Sloss, J.

CONNECTICUT SUPREME COURT OF ERRORS.

APPEAL OF CITY OF NORWALK.

(— Conn. —, 94 Atl. 988.)

Appeal and review — Administrative order — Reasonableness.

1. An order of the Public Utilities Commission relating to the number of street railway tracks and the kind of rails to be used, on a new bridge used jointly by the city and a street railway company, is an administrative matter, and will not be interfered with by the courts where it appears to have been made after hearing regularly had and is supported by evidence.

Appeal and review — Power of court — Administrative Commission order.

2. The Connecticut supreme court of errors has power to set aside an administrative order of the Public Utilities Commission that is unreasonable.

Appeal and review — Jurisdiction of supreme court of errors.

3. The Connecticut supreme court of errors can determine the bounds of power of the superior court and the extent of its duty in reviewing an order of the Public Utilities Commission fixing the equitable portion of the expense of the construction of a bridge which a street railway company, using the bridge, is required to pay, and may decide what considerations should be regarded in an inquiry of that nature, but cannot go beyond that unless the judgment be clearly inequitable.

Apportionment — Cost of strengthening bridge — City — Street railway.

4. In providing for the apportionment of the cost of a bridge between a municipality and a street railway company using the bridge under a statute requiring the railway company to pay its equitable portion of the expense of constructing the bridge, the element of cost of strengthening the bridge for street railway service must include the

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cost of strengthening the entire bridge, and not merely that part of the bridge over which the cars are to be operated.

Apportionment — Basis — Cost of bridge — City — Street railway.

5. Payment by a railway company of the additional cost of strengthening a bridge for street railway service does not meet the statutory obligation to pay its equitable portion of the expense of constructing a bridge used by it; but the company is required to pay its equitable portion of the expense of the entire bridge.

Apportionment — Cost of bridge — City — Street railway — Prospective benefit.

6. In determining the equitable portion of the expense of constructing a new city bridge which a street railway company, using the bridge, is required to pay, the prospective benefit to the company and the prospective use of the bridge by it, as well as the present use, must be taken into consideration.

Apportionment — Cost of bridge — City — Street railway — Various elements considered.

7. In determining the equitable portion of the expense of constructing a new bridge which a railway company, using the bridge, is required to pay, the following considerations, if present, should be taken into account: The additional cost of strengthening the entire bridge for street railway service; the increased size of the bridge due to provision for an additional track authorized by the Public Utilities Commission; the part of the surface of the bridge occupied by the railway in the operation of its cars, and the right of exclusive use of that part when required by it; the permanent occupation of the bridge by its tracks, poles, wires, and overhead equipment; the special construction required for its exclusive service; the relative use of that part of the bridge devoted to the railway traffic by the railway and by the other traffic thereon; the relative wear and tear upon the bridge and its draw by the railway and by the other traffic thereon; the character and permanency of the bridge and the cost of its maintenance and the depreciation upon its investment; the impaired life cost of the bridge due to the railway; the saving to the railway in the maintenance and cost of operation; the decrease in liability for accidents owing to the increased width of the bridge and draw; the relief from congestion due to the increased width of the draw, and the saving of time in operation of cars by the change from a swinging to a lift draw.

Bridges — Plans — Provision for future needs.

8. Under a statute authorizing the construction of a new city bridge and declaring that the street railway company using the bridge shall pay a portion of the expense, the city is authorized to provide for future as well as present railway and public needs in determining the character, size, and cost of the bridge.

Apportionment — Cost of bridge — City — Street railway — Elements excluded.

9. In apportioning the cost of a bridge between a municipality and a street railway company using the bridge, the cost to the railway company of paving should not be considered where its obligation in this respect is governed by statute; likewise the cost of rails, ties, ballast.

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wires, cables, and other special work are not to be considered upon the ground that these are ordinary incidents of putting the railway in condition for fulfilling its duty of operation.

Apportionment — Cost of bridge — City — Street railway — Contribution by state.

10. The contribution made by the state for the erection of a new city bridge should not be considered in determining the equitable portion of the cost of construction which a street railway company, using the bridge, is required to pay, since the contribution was for the purpose of relieving the city from a part of the cost which the state should bear, upon the theory that bridges upon main thoroughfares are of value to the public generally.

Apportionment — Cost of bridge — City — Street railway — Filling approaches.

11. In determining the railway company's portion of the expense, exclusive of paving, for filling the approaches to a bridge erected under a statute providing for the apportionment of the cost of the bridge between a municipality and a street railway company using the bridge, the court should take into consideration the statute providing that the railway shall conform the grade of its tracks to the established grade of the highway when changed, and shall pay one half the cost of necessary excavating, filling, resurfacing, paving, or other construction work within lines 2 feet on the outside of each outer rail of such tracks.

[July 16, 1915.]

APPEAL by the city of Norwalk from an order of the superior court of Fairfield County reviewing the proceedings before the Public Utilities Commission apportioning the cost of a new bridge erected under a statute declaring that the cost should be apportioned between the city and a street railway company using the bridge; reversed and a new trial ordered.

Appearances: John J. Walsh and Edward J. Quinlan and Edwin L. Scofield for appellant; Harry G. Day and Benjamin I. Spock for appellee.

Statement by **Wheeler, J.:**

A demurrer to the reasons of appeal was heretofore sustained, and upon appeal the case remanded by this court, with direction to overrule the demurrer. 88 Conn. 471, 91 Atl. 442. The demurrer was thereafter overruled by the superior court, and the case heard on the merits, and judgment rendered that the Connecticut Company pay to the city of Norwalk, as its equitable portion of the expense of said bridge, $4,906, and that the portion of said order providing that the company lay upon the bridge two tracks be set aside.

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Reference may be had to 88 Conn. 472, 473, 91 Atl. 442, and to Connecticut Co.'s Appeal, 89 Conn. —, 94 Atl. 992, for statements of fact there given.

The trial court found:

Since about 1867, and at the time the proceedings to secure a new bridge were begun, there was a wooden bridge, known as Washington street bridge and a part of a highway known as Washington street, over the Norwalk river which had become unsafe for public travel irrespective of the fact that the Connecticut Company operated a single-track railway over it. The general assembly authorized the town of Norwalk, by its Bridge Commission, to construct a new concrete bridge with steel draw and approaches in place of the wooden bridge. The general assembly constituted the city of Norwalk the successor of the town of Norwalk, and continued the bridge committee with power to determine the location of the tracks and permanent structure of a street railway upon this bridge. The committee consulted the railway company as to load, construction, supports, and connection of trolley wires and conduits and as to the number of tracks to be laid. The company first expressed its preference for two tracks, but later, and before the plans and specifications of the bridge had been completed, amended its request for two tracks and requested a provision for a single track. Subsequently the plans of the bridge were adopted providing for two tracks, and the contract for the building of the bridge awarded without consultation with the company prior to the award of the contract as to the necessity of any repair or reconstruction of the old bridge, or their character, or as to the character or dimensions of the new bridge, or as to the apportionment of the expense thereof. The total cost of the bridge is about $278,000. The extra cost of strengthening for one street railway track is $4,106. A 50, instead of a 60, foot bridge of the same design as the bridge built would cost about $228,000. The state, under the statute, paid toward the cost of the bridge, $50,000. The bridge is constructed to provide for all the requirements of all traffic, including that of the company's 50-ton cars.

East Norwalk is situated easterly of this bridge, and has a population of about 5,000; South Norwalk is situated westerly of this bridge, and has a population of about 11,000. East Nor-

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walk is rapidly increasing in population, and in ten years it is estimated will be the most thickly populated part of the town of Norwalk. This bridge is the most convenient way of travel to the Sound in this vicinity and for travelers upon the shore highway. On the east, two tracks of the defendant approach to the bridge, and three streets converge to it on the west. The state has built a new road on the east of this bridge, and a large proportion of the shore road traffic passes over it, and the bridge is the shortest and easiest means of connection between this state road *via* South Norwalk to the Boston post road. The traffic over the bridge is large and increasing. The 60-foot bridge with a 40-foot roadway and 10-foot sidewalks on each side is reasonably necessary for vehicular and foot traffic, irrespective of whether it contains one trolley track or two. The bridge built is a reinforced concrete bridge of the most modern type, of massive but simple design, involving no elaborate expenditure for ornamentation, and its structural life will be for hundreds of years, and is well calculated to meet the demands of public travel in this locality. It is not of undue width or strength for present or prospective traffic. The trolley line upon this bridge is part of a single-track line extending from the railroad station in South Norwalk through East Norwalk to Broad river, a distance of about 3½ miles, with a branch extending about a mile from the easterly end of the bridge to Dorlon's Point. At the time of the destruction of the old bridge, the company operated its single-track railway on a 24-minute schedule, and this service accommodated the public. A second track on the new bridge will be of no material benefit to the company without laying double tracks on its line, and until this is done the public will derive no advantage from two tracks on the bridge.

Wheeler, J., delivered the opinion of the court:

The order of the Commission provided for: (1) Two tracks across the bridge; (2) rails of a certain type; (3) the payment by the Connecticut Company of a portion of the cost of the bridge.

Upon the former appeal to this court (88 Conn. 471, 91 Atl. 442), the brief of the company accurately recited:

"And it is from that part of the order apportioning the cost that the appeal . . . was . . . taken in the name of the city of Norwalk."

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The company upon the appeal to the superior court demurred to the reasons of appeal of the city, the demurrer was sustained, and the city took its appeal to this court.

No one of the several grounds of the demurrer touched that part of the order of the Commission relating to the two tracks or the kind of rail to be laid. We considered the several grounds of the demurrer, and held that the legality as well as the expediency and propriety of the order apportioning the expense of this bridge were properly before the superior court for its reexamination *de novo*, and remanded the case, with direction to overrule the demurrer. No further pleading was filed. So that the single question before the trial court upon its hearing on the merits was as to the legality, expediency, and propriety of that part of the order of the Commission apportioning the expense of the bridge.

[1, 2] We do not intend to imply that that part of the order of the Commission relating to the number of the tracks and the kind of rail could, upon this record, have properly been made the subject of appeal. These were purely administrative matters, and we expressly so held in Norwalk v. Connecticut Co. 88 Conn. 471, 476, 91 Atl. 442. In repeated decisions we had long since determined this point. Norwalk Street R. Co's Appeal, 69 Conn. 576, 39 L.R.A. 794, 37 Atl. 1080, 38 Atl. 708; Spencer's Appeal, 78 Conn. 301, 61 Atl. 1010.

We judge from the company's draft counterfinding that it claimed in the trial court, contrary to its position in this court upon the former appeal, that the trial court could and should pass upon the legality, expediency, and propriety of this portion of the order of the Commission. It here maintains the same position and rests its claim upon the unreasonableness of the order.

If an administrative order be so unreasonable as to justify judicial interference, it is within our judicial power on proper appeal to set it aside. Norton v. Lake Shore Electric R. Co. 84 Conn. 24, 78 Atl. 587.

It is apparent from the finding and order of the Commission that the decision as to the kind of rails and number of tracks was made upon evidence submitted to the Commission and after hearing regularly had. It is clear that the Commission did not act without evidence; there is nothing to indicate that it plainly

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decided contrary to the evidence. The issue as to the number of tracks was dependent upon a variety of considerations and decided upon a conflict of evidence. In such a situation, it is quite immaterial that the trial court arrived at another conclusion from the facts surrounding this question, and it would be equally immaterial if we entertained another view.

The question was administrative; it was decided after hearing upon a conflict of the evidence. The Commission say:

"The evidence before the Commission indicated that a single track would afford sufficient track facilities for the present street railway traffic, across said bridge, but realizing the necessity of providing for the future, and as tending to obviate congestion on this bridge, having a draw span, the Commission is of opinion that the number of tracks to be laid by said street railway company across said bridge and its approaches should be two, commonly designated as double tracks."

These reasons seem sensible and likewise wise in their provision for the future, in view of the present population and traffic and the prospective increase in each, caring for the proper interests of both railway and public. The company anticipated a future need for two tracks; its charter authorized it years ago. Provision for two tracks with the necessary overhead equipment must be made when a concrete bridge of this character is built. Justice to the architectural design and to reasonable public economy demanded this. The trial court held the equitable portion of the expense of constructing the bridge, which the Connecticut Company should bear, to be the cost of strengthening the bridge sufficiently for one track. The general assembly decided that the old bridge was "unsafe for public travel" and that a new bridge should be constructed in its place.

The statute provided that so much of the expense of construction of a new bridge as may be equitable shall be paid by the company which operates its railway over such bridge. Pub. Acts 1911, chap. 207. What is equitable in a given case is what is fair and just under the circumstances of that case. It would be inadvisable, and perhaps harmful, to attempt a more specific definition. What is equitable represents the judicial judgment of what ought to be in the case presented.

[3] This court can determine the bounds of power of the

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trial court and the extent of its duty under the law in fixing the equitable portion, and it may decide whether the trial court has exceeded the one, or transgressed, mistaken, or neglected the other. We can decide what considerations should be regarded in an inquiry of that nature, and what should be deemed irrelevant and immaterial in the formation of the judgment as to what is equitable. Beyond that we may not go, unless the judgment be clearly inequitable. We cannot substitute our judgment for that of the trial court. Within these limitations its judgment is final. Orono v. Bangor R. & Electric Co. 105 Me. 428, 435, 74 Atl. 1022.

[4] The total cost of the bridge, exclusive of overhead charges and legal and condemnation expenses, was $278,000, and the amount adjudged by the court to be the equitable portion of the company was less than 2 per cent of this cost. As the bridge and its draw had to be built, in reasonable provision for the future, to accommodate two tracks and with a capacity to carry cars of the weight of 50 tons,—a much greater load than the present or prospective demand of vehicular traffic requires,—this award, upon its face, would seem to be inequitable. The additional expense of strengthening the bridge for the street railway service was an element of expense due exclusively to a necessary provision for the railway service, and in equity the railway should pay this. Since the order of the Commission for two tracks over this bridge was not before the trial court, it was required, in the ascertainment of the equitable portion the railway should pay, to include in its estimate the element of cost involved in strengthening the bridge for a street railway service of two tracks. Its refusal to do this was error. We understand from the record the court confined the equitable portion of the additional cost of strengthening to that part of the bridge over which the cars operated on a single track. Plainly the bridge was not thus strengthened merely in the part over which the railway operated, but of course in all its parts. So that the element of cost of strengthening must include the cost of strengthening the entire bridge sufficiently for a two-track railway.

[5, 6] We think the trial court was also in error in construing the act as in this case limiting the equitable portion of the expense of the new bridge to the cost of strengthening. In effect

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we held on the former appeal that the railway was by chapter 237, § 1, of Pub. Acts 1909, as amended by chapter 207, § 1, of Pub. Acts 1911, required to pay its equitable portion of the expense of constructing the bridge, and that the duty of ascertaining this amount was committed to the Commission. The language of the act, and the legislative intent as therein expressed, were so clear and definite as to leave open no other conclusion and to require no argument in support of this interpretation. "So much of the expense of repairing, strengthening, constructing, or reconstructing such bridge as may be equitable, shall be paid by the company operating such railway," the act recites. The railway shall pay, not the equitable portion of one of these items, but of any one or all.

Payment by the railway of the additional cost of strengthening does not meet the statutory obligation of paying its equitable portion of the expense of constructing the new bridge. Nor would payment by the railway of its equitable portion of the expense of that part of the bridge occupied by the railway in the operation of its cars meet its statutory obligation.

The intent of the act is manifest: The railway is to pay its equitable portion of the expense of the entire bridge; that is, it is to pay its fair and just proportion of the expense of the new bridge, no more and no less. Benefit to, and use by, the railway of the bridge, present and prospective, are decisive factors in fixing its equitable portion of the expense. The apportionment must be made once for all; therefore it is that the prospective use, as well as the present use, of the bridge must be regarded.

[7] The city advances two theories, upon one or the other of which it insists the equitable portion of the railway should be found.

We cannot, for the reasons stated, adopt as matter of law any particular theory as a guide to the trial court in fixing this award. No do we think that any definite theory can be evolved which shall settle the bounds of what is and what is not equitable. The solution of that must take into account many considerations, no one of which may be excluded.

We may point out considerations which, if present in this and related cases, may affect this issue and would be helpful in deciding it. And this, we think, is as far as we should go. Among

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these are: The additional cost of strengthening the entire bridge so as to carry the load of cars operated over two tracks. The increased size of the bridge due to provision for two tracks. The part of the surface of the bridge occupied by the railway in the operation of its cars, and the right of exclusion from this part of all other traffic when required for its own use. The permanent occupation of the bridge by the railway not alone by its tracks, but by its poles, wires, and equipment. The insurance of permanency in the installation of the railway's overhead equipment upon the bridge. The special construction required for its exclusive service. The relative use of that part of the bridge devoted to the railway traffic by the railway and by the other traffic thereon. The relative wear and tear upon the bridge and its draw by the railway and by the other traffic thereon. The character and permanency of this bridge and the cost of its maintenance and the depreciation upon its investment. The impaired life cost of the bridge due to the railway. The saving to the railway in the maintenance and cost of operation. The decrease in liability for accidents owing to the increased width of bridge and draw. The relief from congestion due to the increased width of the draw and the saving of time in operation of cars by the change from a swinging to a lift draw. These are among the considerations which may properly aid in ascertaining the equitable portion of the expense of the bridge which the railway shall pay.

[8] The community cannot build a bridge beyond the public and railway requirements in size, design, form, and ornamentation, and compel the railway under this statute to pay any part of the cost not needed for the public and railway requirements. But the community may provide for future as well as present railway and public needs in determining the character, strength, form, design, and cost of the bridge. The bridge constructed did not offend against this obvious rule of fairness. It is found to be a reinforced concrete bridge of most modern type, of massive but simple design, involving no expenditure for elaborate ornamentation, and its structural life will be for hundreds of years, and it is well calculated to meet the demands of public travel in its locality.

[9, 10] In fixing the award, the cost to the railway of paving

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should not be considered; the railway's obligation as to this is governed by Gen. Stat. § 3837. So, too, the cost of rails, ties, ballast, wires, cables, and other special work are not to be considered. These are the ordinary incidents of putting the railway in condition for fulfilling its duty of operation. The contribution made by the state should not be considered; that was made for the express purpose of relieving the community from the payment of a part of the cost which the public should bear, since bridges of this character upon main thoroughfares are of so general use to the public both within and from without the state. This adds no burden to the railway, since the statute limits its payment of the entire cost to what is equitable, and this means to its equitable share or portion. The proportion which a railway or railroad is required to pay for the construction of a new bridge or in related cases in other jurisdictions will furnish little or no help in ascertaining this equitable portion, since each case is governed by its own facts, and the sum awarded determined somewhat by the public policy of each jurisdiction.

[11] Chapter 219, Pub. Acts 1907, provides that the railway shall conform the grade of its tracks to the established grade of the highway when changed, and shall pay one half the cost of necessary excavating, filling, resurfacing, paving, or other construction work within lines 2 feet on the outside of each outer rail of such tracks. Had the approaches to the bridge been filled as was first contemplated, this would have been the method of fixing the railway's portion of this expense exclusive of the paving; and presumably it represents what the general assembly esteemed equitable in such a case. While not at all controlling, it is a circumstance properly to be considered by the trial court in making the award in this case. The fixing of this award is of large consequence to the parties in interest, and the determination of the principles underlying such award will necessarily affect other cases of like character.

This case has been twice tried; it is desirable that the new trial may finally dispose of it. For these reasons, we have endeavored to consider the questions involved in such way as to help, so far as we now can, in its ultimate disposition.

In view of the conclusions reached, we omit passing upon the

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motion to correct, not intending by this course to indicate our approval of the findings complained of.

There is error, and a new trial is ordered.

DISTRICT OF COLUMBIA PUBLIC UTILITIES COMMISSION.

IN RE REGULATIONS FOR THE TESTING OF TAXIMETERS IN THE DISTRICT OF COLUMBIA.

[Formal Case No. 34; P. U. C. No. 1567.]

Service — Taxicabs — Taximeter tests.

All public utilities furnishing taxicab service in the District of Columbia are required to conform to regulations for the testing and use of taximeters adopted by the Commission and made effective after September 1, 1915, except that, on application to the Commission and for sufficient cause shown, such modifications and extensions may be made with reference to such regulations as the facts in each case may warrant.

[August 9, 1915.]

REGULATIONS for the testing of taximeters.

Kutz, Chairman: The following is quoted from § 8 of the District of Columbia appropriation act, approved March 4, 1913, creating a Public Utilities Commission:

"Par. 21. That the Commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage, or other condition pertaining to the supply of the product or service rendered by any public utility, and prescribe reasonable regulations for examining and testing such product or service and for the measurement thereof. It shall establish reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters and appliances for measurements, and every public utility is required to carry into effect all orders issued by the Commission relative thereto.

"Par. 22. That the Commission shall provide for the examination and testing of any and all appliances used for the measuring of any product or service of a public utility. Any consumer or user may have any such appliance tested upon payment of the fees fixed by the Commission. The Commission shall declare and establish reasonable fees to be paid for testing such appliances on

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the request of the consumers or users, the fee to be paid by the consumer or user at the time of his request, but to be paid by the public utility and repaid to the consumer or user if the appliance be found defective or incorrect to the disadvantage of the consumer or user." [37 Stat. at L. 980, chap. 150.]

Formerly, all taximeters installed on public conveyances in the District of Columbia were inspected and tested by the office of the sealer of weights and measures of the District of Columbia. On account of the assumption of jurisdiction by the Public Utilites Commission over taxicab companies, the supervision of meters on the taxicabs of these companies has been transferred to this Commission.

Considering it advisable that regulations be adopted prescribing the tests and use of taximeters, the Commission proceeded to make a study of the matter and an investigation of the regulations in force in other cities.

A draft of proposed regulations was prepared, and copies submitted to the interested parties with a notice of hearing.

A formal hearing was held before the Commission on July 28, 1915, at which those present were given an opportunity to be heard.

After consideration of the matters presented to it, the Commission is of the opinion that the following are reasonable regulations for the testing and use of taximeters, and it is therefore *ordered*:—

(1) That, under the authority of § 8 of the District of Columbia appropriation act, approved March 4, 1913, creating a Public Utilities Commission, the following regulations for the testing and use of taximeters in the District of Columbia be, and the same are hereby, required of and enjoined upon all public utilities furnishing taxicab service in the District of Columbia, their officers, agents, and employees; these regulations to supersede all existing regulations concerning the testing and use of taximeters which conflict with the clauses herein provided.

(2) That, on application to the Commission and for sufficient cause shown, such modifications and exemptions may be made with reference to these regulations as the facts in each case shall warrant. Noncompliance with any of these regulations will constitute a violation of the law, unless such noncompliance is specifically authorized by an order of the Commission.

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(3) That the supervision and testing of taximeters be in charge of electrical inspection bureau of the Public Utilities Commission.

(4) That these regulations shall take effect September 1, 1915, and shall continue in force until changed or abrogated by further order of the Commission.

Regulations.

Taximeter Testing.—Sec. 1. No matter shall be placed in service nor allowed to remain in service, which is not sealed with the prescribed seal and marked with the prescribed certificate of the Commission.

Sealing.—Sec. 2. The electrical inspection bureau of the Public Utilities Commission shall seal with the prescribed seal and mark with the prescribed certificate only those meters which indicate plainly whether or not they are in the recording position, show clearly the amounts to be paid by the passenger, register in accordance with the lawful rates for service in the District of Columbia, and which, upon test, are found to be in good condition and to have an error in measurement for both time and distance of not more than 3 per cent.

Testing Rules.—Sec. 3. All tests made pursuant to these regulations shall be made in compliance with the following rules:

(a) A test of a meter when installed on a taxicab is known as a "service test" and shall include a test of distance register of not less than 1 mile, made by driving the taxicab over a measured course or by rotating the taxicab wheel which operates the meter, and a test of time register of not less than one hour.

(b) A test of a meter when not installed on a taxicab is known as a "bench test," and shall include a test of distance register of not less than 25 miles, and a test of time register of not less than one hour.

(c) At the time of making these tests, the meter and its accessories shall be given such other examination as is necessary, in the judgment of the bureau, to prove its adaptability and good condition for service.

Tests by Commission.—Periodic Tests.—Sec. 4. At least once every year each meter used or intended to be used by a utility in the District of Columbia shall be submitted to either a service or a bench test.

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At least once every year the operating transmission of the meter as installed on each taxicab used or intended to be used by a utility in the District of Columbia shall be inspected by the bureau with the meter in position.

Other Tests.—Sec. 5. The Commission will receive complaints from any customer concerning the inaccuracy of a meter, and either a service or a bench test will be made of the meter if, in the opinion of the Commission, the facts presented warrant such test.

Sec. 6. Upon application of a public utility to the Public Utilities Commission, a meter shall be subjected to either a service test or a bench test by the bureau, and the prescribed fee shall be paid therefor by the said utility.

Fees and Records.—Sec. 7. The prescribed fee for each service test and for each bench test of a meter shall be 50 cents, except in the case of a test resulting from a complaint of a customer as described in § 6.

Sec. 8. Each utility shall keep a complete record of all meters in its service, showing the numbers of the taxicabs on which they are installed and the date of each installation and of each removal.

Sec. 9. The bureau shall keep a complete record of all tests made under its supervision, and of all fees due and received for such testing. All such fees shall be turned in by the bureau to the collector of taxes of the District of Columbia.

Use of Meters.—Sec. 10. (a) The meter shall be so located on the taxicab that the figures indicated on its face may be easily read by any passenger within the taxicab.

(b) The face of the meter shall be plainly illuminated whenever the meter is used to register amounts for hire during the period from one-half hour after sunset to one-half hour before sunrise.

(c) The wheel diameter of the taxicab for which the meter is adjusted shall be plainly marked on the meter. The meter shall not be used in connection with a wheel of different diameter, unless the necessary adjustments have been made and the approval of the bureau obtained.

(d) The meter shall be operated from the front wheel of the taxicab by means of an approved cable and the star and band transmission, or equal.

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Posting of Rates.—Sec. 11. Each taxicab shall carry at all times in a conspicuous place within the taxicab a card on which is printed in legible type the schedule of rates charged for service in the District of Columbia.

ILLINOIS PUBLIC UTILITIES COMMISSION.

CITY OF EVANSTON

v.

PUBLIC SERVICE COMPANY OF NORTHERN ILLINOIS.

[No. 2740.]

Rates — Gas — Approval of stipulated schedule — Block rates.

The Illinois Commission, in approving a reduced schedule of block gas rates agreed upon between a city and a gas utility in consideration of the dismissal of a complaint against the company as to the reasonableness of existing rates, does not find that such rates are reasonable, or commit itself to the propriety of the block system of rates for gas.

[August 5, 1915.]

COMPLAINT as to the unreasonableness and discriminatory character of gas rates of the Public Service Company of Northern Illinois; complaint dismissed on the ground that new schedules of reduced rates had been adopted by stipulation between the parties, the Commission not passing upon the reasonableness of the rates adopted in the new schedule, or as to the propriety of the block system of rates for gas.

Commissioner **Shaw**: The petitioner herein, the city of Evanston, a municipal corporation, filed a formal complaint (dated July 9, 1914) which alleges (1) that the petitioner is a municipal corporation in the county of Cook, state of Illinois, (2) that the respondent is a public utility subject to the jurisdiction of this Commission, (3) that the respondent is engaged in the business of furnishing electricity, gas, and heat in the city of Evanston and in other adjacent municipalities, (4) that the respondent does not possess the right to lay and to operate gas mains in the streets of the city of Evanston under any franchise granted by said city; that the respondent operates by virtue of an old charter granted in 1867 by the state of Illinois to the Northwestern Gaslight & Coke Company, (5) that the rates

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charged for gas by the respondent are unjust and unreasonable, (6) that the respondent discriminates in rendering lower rates to the People's Gaslight & Coke Company of Chicago than to the public, and (7) that the respondent, without legal right, has utilized the streets of the city of Evanston for the purpose of laying mains to adjacent municipalities and to said the People's Gaslight & Coke Company.

A reply, dated July 20, 1914, was filed by the respondent. In its reply the respondent admits (1) that the city of Evanston is a municipal corporation in the county of Cook, state of Illinois, (2) that the Public Service Company of Northern Illinois is a corporation organized under the laws of the state of Illinois for the purpose, among other things, of engaging in the business of furnishing electricity, gas, and heat in the city of Evanston and in other adjacent municipalities, and (3) that it operates in the city of Evanston by virtue of a charter granted in 1867 to the Northwestern Gaslight & Coke Company, which was subsequently consolidated and merged with the respondent; but the respondent denies that the rates charged for gas in the city of Evanston are unjust and unreasonable, and denies that the contract rates charged to the People's Gaslight & Coke Company of Chicago are discriminatory or illegal, and alleges that no laws of the state of Illinois are violated by utilizing the streets of the city of Evanston for the purpose of laying gas mains to adjacent municipalities, and to said the People's Gaslight & Coke Company.

The Commission, under date of July 31, 1914, entered a preliminary order requiring the respondent to submit, on or before September 15, 1914, complete and correct inventories of all its property used in its business of furnishing heating and illuminating gas to the city of Evanston and the inhabitants thereof, and further ordered that said inventories should show thereon the fair value of the property. Under date of July 25, 1914, the petitioner advised the Commission that it would have an independent inventory and appraisal of the respondent's property made by a responsible engineering concern, for use on the hearing before the Commission.

Under date of December 30, 1914, the Commission advised the corporation counsel of the city of Evanston that the respondent had filed an inventory and appraisal made by Mr. Wil-

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liam J. Hagenah of Chicago, Illinois, and that the document could be used by the experts engaged by the petitioner.

The corporation counsel of the city of Evanston, under date of January 9, 1915, advised the Commission that the respondent had refused to permit the petitioner's expert to have access to the respondent's books and files, which were to be consulted for the purpose of obtaining an independent inventory and appraisal. The Commission suggested to the attorneys for the respondent that the determination of the questions involved would be facilitated if the petitioner were granted permission to review the books and files of the respondent. The permission was granted.

The original complaint was amended by the city of Evanston on July 14, 1915. The amendment followed the original complaint, and, in addition, asked "that due reparation may be made . . . with interest at the legal rate from the date of payment of such excessive or unjustly discriminatory amounts." A copy of the amendment was mailed by the acting secretary of the Commission to the respondent's attorneys, who duly acknowledged the receipt of the document.

The city of Evanston, by its city counsel, adopted, on July 20, 1915, the following resolution, which is in words and figures as follows:

"Whereas, there is now pending before the state Public Utilities Commission of the State of Illinois, a complaint of the city of Evanston against Public Service Company of Northern Illinois, which said complaint was filed by said city for the purpose, among other things, of securing a reduction in the rates of heating and lighting gas, furnished by said company to consumers within said city, and

"Whereas, said company has now proposed and agreed, on its own behalf and on behalf of its successors and assigns, subject to the approval of the State Public Utilities Commission, to and with the mayor and city council of said city, in consideration of the dismissal of said complaint, to reduce said rates in accordance with the following schedule, commencing August 1, 1915, to wit:

"The rate to be charged by the Public Service Company of Northern Illinois, its successors, and assigns, for furnishing

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gas service to any consumer within the city of Evanston, shall not exceed one dollar and ten cents ($1.10) per thousand cubic feet of gas, for all gas consumed in each month up to and including 1,000 cubic feet; and one dollar ($1) per thousand cubic feet of gas for all gas consumed in such month, in excess of 1,000 cubic feet, and up to and including 3,000 cubic feet; and ninety cents (90 cents) per thousand cubic feet of gas for all gas consumed in such month, in excess of 3,000 cubic feet.

"All bills shall be rendered monthly as nearly as practicable, and on each bill paid within ten (10) days after its rendition, the consumer shall be entitled to a discount of ten cents (10 cents) per thousand cubic feet of gas on the total consumption charged for therein. Provided, however, that if payment shall not be made within ten (10) days, said company or its successors and assigns shall not be required to allow said discount. Said company, its successors, and assigns shall also have the right to remove its meter from the premises of any consumer connected with its service, and to discontinue its service whenever the net amount of any monthly bill for consumption in said premises shall not exceed seventy-five cents (75 cents), unless such consumer shall agree to pay a minimum charge of seventy-five cents (75 cents) per month per meter.

"Now, therefore, be it resolved by the city council of the city of Evanston, that in consideration of the foregoing proposals and of the reduction in the gas rates as aforesaid, the corporation counsel of said city is hereby authorized and directed to dismiss said complaint."

A copy of the above resolution, certified by Mr. John F. Hahn, city clerk, was transmitted to the Commission by the respondent's attorneys under date of July 28, 1915.

On July 22, 1915, the petitioner and the respondent in this cause entered into a stipulation, which is in words and figures as follows:

Whereas the city council of the city of Evanston, the above-named complainant, at a meeting duly called, convened, and held on July 20, 1915, duly adopted a certain resolution, which said resolution is in words and figures, as follows:—

[Note.—The resolution is identical with that which is quoted on pages 311 and 312 hereinabove.]

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Now, therefore, it is hereby stipulated and agreed by and between the parties to the above-entitled cause that, upon the filing by the Public Service Company of Northern Illinois, the above-named defendant, with the State Public Utilities Commission of Illinois, of a schedule of rates in accordance with the foregoing resolution, and upon the entering of an order by the State Public Utilities Commission of Illinois, permitting such schedule of rates to go into effect, the above-entitled cause may be dismissed.

Dated this 22d day of July, 1915.

City of Evanston,
(Signed) By Frank T. Murray,
Corporation Counsel.

Public Service Company of Northern Illinois,
(Signed) By Sears, Meagher, & Whitney,
Its Solicitors.

The respondent, through its attorneys, requested, under date of July 28, 1915, that the rates stipulated in the above agreement be approved by the Commission. The corporation counsel of petitioner moved the Commission that upon its approval of the rates agreed upon this case be dismissed.

Before entering an order which approves the stipulated rates, and which dismisses the case, a brief discussion of certain pertinent features appears to be appropriate.

At present, and for some time past, gas has been sold in the city of Evanston at the uniform rate of $1 per thousand cubic feet (net). There have been no requirements respecting a minimum bill. The new price of gas, as agreed upon by stipulation effective August 1, 1915, is to be a block rate of $1 for the first 1,000 cubic feet consumed in a given month, 90 cents for the next 2,000 cubic feet consumed in the same month, and 80 cents for all gas consumed in that month above 3,000 cubic feet, —all prices net. In addition, the new rates provide that the minimum bill shall be 75 cents per month. The reduction in gas bills will affect about 80 per cent of the consumers, whereas there will be no reduction to 20 per cent of the consumers,—the so-called small consumers. Some of these small consumers actually will suffer a slight increase in monthly bills, owing to

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the working of a newly adopted minimum rate, which is fixed in the resolution of the city council.

In entering the order below, approving the rates set forth in the stipulation, the Commission justifies its action solely on the ground that the rates, which are to take effect August 1, 1915, will reduce immediately a large portion of the bills which are now rendered for gas in the city of Evanston. At any future time the question of the reasonableness of the gas rates of the city of Evanston may be taken up by the Commission upon its own motion or upon complaint as prescribed by statute, *i. e.*, § 64 of the Public Utilities Commission law (approved June 30, 1913, and effective January 1, 1914).

It is therefore and for the foregoing reasons *ordered* that, in accordance with stipulation entered into on July 22, 1915, between the city of Evanston and the Public Service Company of Northern Illinois, the respondent in this case shall be permitted to amend its present schedule of rates for gas in the city of Evanston (effective August 1, 1915) to conform to the following:

One dollar and ten cents per 1,000 cubic feet of gas for all gas consumed in each month up to and including 1,000 cubic feet; $1 per 1,000 cubic feet of gas for all gas consumed in such month, in excess of 1,000 cubic feet, and up to and including 3,000 cubic feet; and 90 cents per 1,000 cubic feet of gas for all gas consumed in such month, in excess of 3,000 cubic feet.

All bills shall be rendered monthly as nearly as practicable, and on each bill paid within ten days after its rendition, the consumer shall be entitled to a discount of 10 cents per thousand cubic feet of gas on the total consumption charged for therein; Provided, however, that if payment shall not be made within 10 days, said company or its successors and assigns shall not be required to allow said discount.

Said company, its successors, and assigns shall also have the right to remove its meter from the premises of any consumer connected with its service, and to discontinue its service whenever the net amount of any monthly bill for consumption in said premises shall not exceed 75 cents, unless such consumer shall agree to pay a minimum charge of 75 cents per month per meter.

The Commission does not at this time find that the rates ap-

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proved are reasonable, nor does it commit itself to the propriety of a block system of rates as a correct basis of charges for gas.

For the reasons given this case is dismissed.

ILLINOIS PUBLIC UTILITIES COMMISSION.

IN RE RECEIVERS OF CENTRAL UNION TELEPHONE COMPANY.

[No. 3323.]

Licenses — Use of telephone property by other companies — Authority to grant.

The receivers of a telephone company were authorized to grant "facility licenses" to other utilities to attach and maintain their wires and fixtures on the poles and other property of the company, not needed for its own business, provided that such licenses be for a term not to exceed five years, for adequate consideration, and upon terms not in conflict with the rules and regulations of the Commission, or with any of the provisions of the Public Utilities law; and provided, further, that such licenses be terminable upon thirty days' notice or at any time upon objections by the Commission, and that two copies of such licenses be filed with the Commission within twenty days from their execution.

[August 5, 1915.]

APPLICATION of receivers of a telephone company for consent to the granting of facility licenses; granted.

By the **Commission**: The application in the above-entitled matter represents that the petitioners, David R. Forgan, Edgar S. Bloom, and Frank F. Fowle, as receivers of the Central Union Telephone Company, a corporation organized under the laws of Illinois, are in possession and control of and are managing and operating all of the telephone property and telephone equipment of said Central Union Telephone Company in the state of Illinois, and furnishing telephone service, local and long distance, to the public; that in many instances it is convenient and advisable to grant, under a "facility license," the right to attach and maintain certain of the wires, cables, and fixtures of another public utility to and upon the poles and other property of said Central Union Telephone Company, where the space so granted is not at the time needed by, or useful to, the petitioners in con-

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nection with carrying on the telephone business or in the performance of their duties to the public.

Application is accordingly made for a general order permitting said receivers to grant facility licenses as herein provided, and the Commission having considered said application and being fully advised in the premises:

It is therefore *ordered* that the petitioners, David R. Forgan, Edgar S. Bloom, and Frank F. Fowle, as receivers of Central Union Telephone Company, be, and they are hereby, authorized to grant facility licenses permitting other public utilities to attach and maintain their wires, cables, and fixtures to and upon the poles and other property of said Central Union Telephone Company, in the state of Illinois, where the space granted by such facility license is not needed by, or useful to, the said receivers in connection with carrying on the said telephone business or in the performance of their duties to the public; provided that every such facility license shall be made for a term not exceeding five years and for such sum of money as will constitute a reasonable return for such grant, and upon such other terms and conditions as may be agreed upon by the licensor and licensee, and as are not in conflict with any of the rules and regulations of this Commission or with any of the provisions of the act entitled, "An Act to Provide for the Regulation of Public Utilities," now in force in the state of Illinois.

It is further *ordered* that in every such facility license, provision shall be made for the termination thereof upon thirty days' notice by the licensor to the licensee, and further provision that upon objection, at any time, by this Commission, to the further continuance of the facility license, the same shall be immediately canceled and terminated.

It is further *ordered* that two copies of every facility license entered into pursuant to this general order shall be filed with the Commission within twenty days from the date of the execution of such facility license, and that such copies be certified by the proper officer of said licensor.

By order of the Commission at Springfield, Illinois, this 5th day of August, 1915.

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ILLINOIS PUBLIC UTILITIES COMMISSION.

IN RE WESTERN UNITED GAS & ELECTRIC COMPANY.

[No. 3425.]

Service — Payment — Deposits.

1. Equity to both the utility and the consumer demands a recognition of a reasonable cash deposit as security for the prompt payment of the consumer's bills.

Service — Payment — Cash deposits — Rules and regulations.

2. The rules and regulations of a public utility setting forth the terms and conditions relating to cash deposits to be made by consumers of gas, electricity, and steam heat, adopted for the purpose of securing the payment of monthly bills, were approved and the practice of the company with reference to such deposits prescribed.

[August 5, 1915.]

APPLICATION for approval of rules and regulations setting forth the terms and conditions upon which consumer's deposits other than prepayment gas meter deposits are required, held and withdrawn; approved and practice with reference thereto prescribed.

Commissioner **Shaw**: The petitioner herein, the Western United Gas & Electric Company, a corporation organized under the laws of the state of Illinois, has filed an application for the approval of certain rules and regulations which set forth terms and conditions relating to cash deposits to be made by consumers of gas, electricity, and steam heat, as guaranty in the payment of said consumers' monthly bills. The nature of the case may be stated as follows:—

The Western United Gas & Electric Company represents itself as engaged in the business of selling (1) artificial gas in divers municipalities in the counties of McHenry, Kane, Cook, Du Page, De Kalb, Kendall, and Will; (2) electricity in divers municipalities in the counties of Kane, Kendall, and Du Page; and (3) steam heat in the city of Aurora, county of Kane. In the past, the company has been placed at a disadvantage in collecting bills from consumers, within the discount period. Considerable misunderstanding and much trouble have resulted from the previous indefinite and unjustly discriminatory regulations and practices respecting the collection of bills. The company

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seeks relief from the situation, and claims that misunderstandings and troubles of consumers are to be avoided by the adoption of certain rules which are advocated in the application.

[1] It appears that the application of the petitioner is reasonable. It is necessary that any public utility be protected as far as practicable against unpaid accounts. In a rate-making procedure, such unpaid and worthless bills receivable obviously would have to be allowed as an operating expense. Equity to both the utility and the consumer demands a recognition of a reasonable cash deposit as security for the prompt payment of the consumers' bills. The Commission has checked and revised the rules and regulations which were submitted by the Western United Gas & Electric Company.

It is therefore *ordered* that the Western United Gas & Electric Company be and hereby is authorized and required:

[2] I. To adopt and to comply with the following rules and regulations relating to deposits and guaranties which are required henceforth from consumers of artificial gas, electricity, or steam heat:—

Rules and Regulations for the Payment of Bills for Gas, Electricity, and Steam Heat.

(Other than prepayment gas meter accounts.)

1. *Present Consumers.*—Every present consumer (individual, firm, or corporation) who is not an owner of real estate, and who, upon any discount date, has not paid the bills of the previous two months, shall be required either to furnish a cash deposit or to obtain a property owner's guaranty, as security for present and future unpaid bills. Payment of the bills in arrears shall not exempt the consumer from furnishing the required security. The amount of the cash deposit shall equal two times the gross price of the average monthly quantity of gas, electricity, or steam heat (one or all) used by the consumer during the preceding twelve months. In event the consumer has not been connected to the company's mains for a period of twelve months, then the amount of the deposit shall equal two times the gross price of the average monthly quantity of gas, electricity, or steam heat (one or all) used by the consumer during the period of the service. The amount of the deposit shall be readjusted once in every twelve

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months. A property owner's guaranty shall consist of a written agreement wherein some responsible property owner, who is acceptable to the company, secures the company from any and all losses which may occur in case said consumer should fail to pay the service bills.

2. *New Consumers.*—Every new consumer (individual, firm, or corporation) who is not an owner of real estate shall be required, at the time of application for service, either to furnish a cash deposit in the amount of $5 or to obtain a property owner's guaranty, as security for possible future unpaid bills. After the applicant shall have been a consumer for three months' time, the amount of the deposit shall be adjusted to equal the gross price of the gas, electricity, or steam heat (one or all) consumed during the first two full months during which meter readings have been obtained. At the end of twelve months, the deposit shall be readjusted to conform with rule 1 hereinabove. In any adjustment of the amount of the deposit, either the company shall refund the difference whenever the new deposit is less than the current deposit, or the consumer shall make additional payment whenever the new deposit is greater than the current deposit. The property owner's guaranty shall be the same as defined under rule 1 hereinabove.

3. *Certificate of Deposit, Interest, Withdrawal.*—The company shall acknowledge to the consumer the receipt of all deposits, using for this purpose a standard printed form to be known as the certificate of deposit. The company shall pay to the consumer interest at the rate of 5 per cent per annum upon the total amount of the deposit. Interest shall be due upon the first day of January of each year, and shall either be paid in cash by the company shortly thereafter, or be credited on the consumer's bill which is rendered not later than thirty-one days subsequent to the day upon which the interest falls due. The company, moreover, shall pay to the consumer any interest which may accrue upon the deposit between the interest date (January 1st) and the date upon which a deposit may be withdrawn at a termination of service. The amount of the deposit, plus all accrued interest and less all indebtedness to the company, shall be returned to the consumer upon presentation of the certificate of deposit, whenever service is no longer rendered at the premises of the consumer.

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Mere change of residence or of location of service shall not be deemed sufficient grounds either for requiring additional deposit or for requesting a refund of a portion of a deposit. If, upon a termination of service to a consumer, there exist unpaid bills, and if the consumer has not advised the company definitely as to the disposition of the deposit, the company, in thirty days after the cessation of service, shall apply the amount of the deposit (or any portion of said amount) to the liquidation of the consumer's indebtedness. The company, furthermore, shall endeavor earnestly to communicate with the consumer and to give notification of any unexpended credit due on the consumer's deposit.

4. *Service Disconnection, Extension of Discount Period, etc.* —The company shall disconnect the service at the premises of the consumer whenever:

(a) A present consumer fails to comply with rule 1 hereinabove.

(b) A new consumer fails to comply with rule 2 hereinabove.

(c) A consumer fails to pay a bill within forty-five days after expiration of the discount period of said bill, provided no proper exception has been taken to the bill. Should a consumer's bill remain unpaid fifteen days after expiration of the discount period of such bill, it shall be optional with the company to discontinue service at any time after said fifteen days and prior to forty-five days after expiration of the discount period.

In no case shall the company disconnect any service for nonpayment of account, unless a notice warning the consumer of the intention to disconnect the service because of nonpayment of account, be mailed to the consumer at least five days in advance of such service disconnection. Failure to receive a customary monthly bill from the company shall not entitle the consumer to exception under these rules, unless such failure is due to carelessness on the part of the company. If requested by consumer, the discount period for one month per calendar year will be extended twenty days, and during this twenty days, the consumer will be entitled to the regular discount on the bill if the account is paid prior to the time limit of the extension. The discount period for churches, hospitals, charitable institutions, schools, and other public organizations or institutions shall expire thirty days after

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the last day of the month for which bill is rendered. No exception to any rule or regulation contained herein shall be made, except when the written consent of the State Public Utilities Commission of Illinois has been obtained.

II. To issue to every person (firm or corporation) from whom a deposit may have been received, a certificate of the amount deposited. The certificate of deposit shall have printed upon the face thereof the following conspicuous inscription: "This Receipt is Not Negotiable nor Transferable." On the back of the certificate of deposit there shall be printed the rules and regulations specified under § I. hereinabove. The certificate of deposit shall be of such form that additions and deductions to the amount of the deposit may be indicated clearly.

III. To have on hand, for distribution among consumers, prospective consumers, and others, printed circulars which bear the corporate name of the utility which are entitled, "Terms and Conditions upon which Consumer's Deposits are Required, Held, and Withdrawn (except prepayment gas meter accounts)," and which contain the following printed matter:—

"1. The order of this Commission herein contained, in full.

"2. A facsimile reproduction of the face of the forms used as a certificate of deposit and as a property owner's guaranty.

"3. Such other terms and conditions as the company may prescribe, provided such terms and conditions are just, reasonable, and not in conflict with this order, with other rules and regulations of the Commission, or with the terms of the Public Utilities law (effective January 1, 1915)."

A copy of this printed circular shall be supplied to every consumer (or prospective consumer) prior to exacting any deposit. Copies of the circular shall be filed with the Commission within thirty days after date of this order.

IV. To render (or mail) to each and every depositor, whenever a deposit is either refunded or applied to unpaid bills, a statement showing:—

1. The unpaid bills and the amount thereof.

2. The amount of the deposit (or deposits) and the accrued interest thereon.

3. The interests which have been either paid or credited by the

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company to the consumer, and the dates of such payments or credits.

4. The balance due to the company or to the consumer.

5. The other transactions (if any) in which the deposit (or any part thereof) has been involved.

V. To provide a reasonable and speedy method whereby a depositor, who applies for the return of the deposit (or the proceeds thereof), but who is unable to produce the original certificate of deposit, will not be deprived of the amount of the deposit, nor of any part of that amount.

VI. To make diligent effect to find each depositor who may cease to be a consumer and who may have a balance due him, and to inform the depositor of the amount of the credit and of the method of withdrawing the deposit (or the proceeds thereof).

VII. To maintain a complete record of each and every deposit received, in accordance with the requirements of such uniform system of accounts as may be prescribed by this Commission in the future.

VIII. To maintain in a proper manner an additional record which shows:—

1. The name of the consumer making the deposit.

2. The premises of the consumer at the time of making the deposit.

3. The further premises occupied by the consumer, while a depositor and customer of the company.

4. The date and amount of deposit.

5. The date and amount of any additional deposits (or refunds).

6. The method of computing the deposit.

7. The amount of accrued interests and the date and amount of interest payments.

8. The complete record of each transaction which involves the deposit (or any part thereof).

9. The reference to the consumer's ledger account and meter record.

IX. To establish a standard blank form (printed) which is to be used in connection with rules 1 and 2 under § I. hereinabove, whenever the consumer's bills are guaranteed and secured by a responsible property owner in lieu of a cash deposit.

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X. To permit no interest on deposits to remain unpaid and to accumulate unnecessarily.

By order of the Commission, at Springfield, Illinois, this 5th day of August, 1915.

ILLINOIS PUBLIC UTILITIES COMMISSION.

POTOMAC TELEPHONE COMPANY

v.

COON BROTHERS TELEPHONE COMPANY.

[No. 3780.]

Discrimination — Free telephone service — When not to be discontinued.

A telephone company cannot discontinue free service between one of its exchanges and the exchange of another company without permission of the Illinois Commission, where such service has been voluntarily accorded for a number of years, since § 36 of the Public Utilities Commission act provides that "no public utility shall increase any rate or other charge, or so alter any classification, contract practice, rules, or regulations as to result in any increase in any rate or other charge under any circumstances whatsoever, except upon a showing before the Commission and a finding by the Commission that such increase is justified;" and it is immaterial that the company discontinuing its service may, by virtue of a contract, have the right to impose a toll charge.

[August 5, 1915.]

COMPLAINT with reference to discontinuance of free telephone service between Armstrong and Penfield. The respondent claimed the right to charge toll for service between the exchanges to complainant's subscribers by virtue of a contract alleged to be binding upon complainant. The Commission, while not passing upon the validity or binding effect of this contract, assuming it to be valid, held that the respondent company by virtue of the Public Utilities act was forbidden to discontinue such service without authorization by the Commission, and ordered such service restored until further order.

The appearances are set out in the opinion.

By the **Commission**: The complaint in this case sets forth that the complainant is a public utility operating telephone exchanges at Potomac, Armstrong, and Collison, Illinois, with

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headquarters at Potomac; that the respondent, the Coon Brothers Telephone Company, is a public utility and within the jurisdiction of this Commission; that said respondent did on January 1, 1915, without the consent of complainant, discontinue free telephone service between the villages of Armstrong and Penfield, Illinois; that for at least ten years prior to that time free telephone service had been given between said two villages.

The respondent answered and denied that free telephone service to Penfield had been given to the Armstrong subscribers of the complainant, or that said subscribers were entitled thereto. The respondent alleged that on January 1, 1915, it learned that complainant had been giving some of its subscribers at Armstrong free service with the Penfield subscribers of the respondent, and that it thereupon notified complainant to discontinue that practice.

The respondent contends that under certain agreements made by it with the predecessors of the complainant, which it contends are binding upon the complainant, the subscribers of the respondent at Penfield are entitled to free telephone service to Armstrong, but that the complainant's subscribers at the latter point are to pay toll for each telephone call to Penfield.

A hearing was held before the Commission on June 23, 1915. Robert W. Daniels, attorney, appeared for the complainant, and Leslie J. Owen, attorney, appeared on behalf of respondent.

From the evidence in this case, it appears that the complainant herein in a copartnership consisting of Frank Samuel and Charles Jester; that said partnership has since about April 1, 1914, owned and operated a telephone system with local exchanges at Armstrong, Illinois, and other towns in that vicinity. The respondent owns and operates a telephone system in the territory west of that occupied by the complainant, with local exchanges at various points and with an exchange at Penfield, a village located about 5 miles west of Armstrong. The respondent owns the portion of this toll line that extends from Penfield to a point about ½ mile south of Armstrong. The complainant owns the remainder of the line. Since said toll line was constructed, the subscribers of the respondent at Penfield have had free tele-

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phone service over said toll line with the telephone subscribers at Armstrong.

The principal question in this case is as to whether the Armstrong subscribers of the complainant are entitled to free service over said toll line with the Penfield subscribers of the respondent, or, in other words, whether the respondent had the right in January, 1915, to discontinue telephone service between Armstrong and Penfield.

The evidence clearly shows, and in fact the respondent admits, that since the Armstrong exchange has been owned and operated by the complainant, the latter subscribers at Armstrong have had free toll service over said line with the subscribers of the respondent at Penfield. The officers of the respondent company testified that they had no knowledge of that fact until it was brought to their attention about January 1, 1915. They then directed that complainant's subscribers no longer be given such free service. The mere fact that the officers of the respondent company may not have been aware of the free use of the line in question by the Armstrong subscribers of the complainant does not alter the fact that such practice existed for a number of years, and that respondent's employees had actual knowledge of that fact. Such knowledge on the part of such employees who were in actual charge of respondent's business must be held to be notice to the respondent of the existence of such free service. While there is some conflict in the testimony as to whether this free service was extended to the subscribers of the Armstrong exchange prior to the acquisition of said exchange by the complainant herein, yet, from a careful consideration of the entire record, we are convinced that such free service did exist before the Armstrong exchange was purchased by the complainant, and that such free service had existed for seven or eight years prior to January 1, 1915.

The respondent contends that under a certain contract dated December 12, 1907, between the respondent and the complainant's predecessors, *viz.*, J. H. Davis, Frank Samuel, and the Fountain Creek Telephone Company, the respondent is entitled to a toll charge for all telephone calls made by the Armstrong subscribers of the complainant to Penfield. Complainant contends that it was not a party to this contract; that it never as-

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sumed the obligations agreed to therein by its predecessors; and that said contract is not binding upon complainant, because by its express terms the contract is only binding upon the respective parties thereto, and does not purport to bind the successors or assigns of either.

From the conclusions we have reached in this case, it will not be necessary to decide whether said contract is in fact binding upon the complainant.

It appearing that up to about January 1, 1915, and for a number of years prior thereto free toll service existed between Armstrong and Penfield, we now come to consider whether the respondent had the right to summarily discontinue such service. Section 36 of the State Public Utilities Commission act provides in part as follows:

"Unless the Commission otherwise orders, no change shall be made by any public utility in any rate or other charge or classification, or in any rule, regulation, practice, or contract, relating to or affecting any rate or other charge, classification or service, or in any privilege or facility, except after thirty days' notice to the Commission and to the public as herein provided. . . .

"No public utility shall increase any rate or other charge, or so alter any classification, contract, practice, rule, or regulation as to result in any increase in any rate or other charge, under any circumstances whatsoever, except upon a showing before the Commission and a finding by the Commission that such increase is justified."

No application was made to or authority received from this Commission by the respondent to discontinue free telephone service between the points in question. Assuming for the sake of argument that the contract referred to above gave the respondent the right to impose a toll charge on messages between Armstrong and Penfield, and assuming further that said contract became binding upon the complainant herein when it acquired said Armstrong exchange, we are unable to agree with respondent's contention that it had, under the facts and circumstances in this case, the right to discontinue free service and make a toll charge between the points above mentioned.

The discontinuance of free service between the points in question undoubtedly was an increase in a rate, or the alteration of a

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practice which resulted in an increased charge for service, within the meaning of said § 36. This section of the act could not be nullified by a private agreement of the parties to this case, if such agreement in fact exists. It follows that the respondent had no right to discontinue the free service in question.

It is therefore *ordered* that the respondent, Coon Brothers Telephone Company, shall until the further order of this Commission continue to furnish free telephone service with its local telephone subscribers at Penfield to the subscribers of complainant's telephone exchange at Armstrong, Illinois.

Ten days is considered sufficient time within which to comply with this order.

By order of the Commission this 5th day of August, 1915. Dated at Springfield, Illinois.

ILLINOIS PUBLIC UTILITIES COMMISSION.

IN RE SOUTH BELOIT WATER, GAS, & ELECTRIC COMPANY.

[No. 3921.]

Rates — Water — Electricity — Adoption of rates established by Commission of sister state.

The Illinois Commission authorized a distributing utility to change its rates for water and electricity furnished to its consumers in a village virtually a suburb of a Wisconsin city, by putting into effect the rates established by the Wisconsin Commission for the generating and producing utility located in that city.

[August 5, 1915.]

APPLICATION by utility for authority to change rates for water and electric service at South Beloit, Illinois; granted.

The appearances are set out in the opinion.

Commissioner Shaw: The petitioner herein, the South Beloit Water, Gas, & Electric Company, a corporation organized under the laws of the state of Illinois, has filed an application for authority to change the rates charged by it for water and electricity supplied to its consumers in the village of South Beloit.

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A hearing was held in Chicago on July 13, 1915, and Mr. B. F. Lyons, president of the company, appeared in support of the petition. From the petition and evidence, the nature of and the reasons for the request may be set forth as follows:

The village of South Beloit is situated in Winnebago county, near the Illinois-Wisconsin line, and is virtually a suburb of Beloit, Wisconsin. The water and electricity furnished to the consumers of the South Beloit Water, Gas, & Electric Company are purchased from the Beloit Water, Gas, & Electric Company, by the petitioner, who maintains in South Beloit distribution systems only.

The Railroad Commission of Wisconsin investigated the Beloit Water, Gas, & Electric Company, and as a result of this investigation has issued an order, dated April 6, 1915 [P. U. R. 1915B, 1005], revising the rates for water and electricity supplied to the consumers in the city of Beloit, Wisconsin. The South Beloit Water, Gas, & Electric Company is now asking that the rates so ordered in effect for the city of Beloit, Wisconsin, be made effective in the village of South Beloit, Illinois.

The rates for water and electricity now in effect in South Beloit are given below:

Schedule of Water Rates, Charges, and Classifications of South Beloit Water, Gas, and Electric Company.

In Force July 1, 1913, and January 1, 1914.

Building Rates

Stone per cord	.10
Brick per M.	.10
Plaster per 100 sq. yd.	.15
Concrete per cu. yd.	.03

Meter Rates—Quarterly Charge.

First	6,670 cu. ft.	—8½¢ Gross	—7½¢ Net per 100 cu. ft.
Next	3,330 " "	—7½¢ "	—6½¢ " " " " "
Next	6,700 " "	—6½¢ "	—5½¢ " " " " "
All over	16,700 " "	—2½¢ "	—1½¢ " " " " "

Quarterly Service Charge Payable in Advance.

¾" meter, one consumer on meter	$ 1.00
¾" " " " " "	1.25
1" " " " " "	1.75
1½" " " " " "	2.00
2" " " " " "	3.00
3" " " " " "	5.00
4" " " " " "	8.00
6" " " " " "	15.00
8" " " " " "	25.00

For each additional consumer on the same meter, 50 cents.

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A discount of 1 cent per 100 cu. ft. will be allowed, if paid on or before the last discount day, following the month in which water is consumed.

When unable to read the meter, a minimum charge will be made which will be adjusted when the reading of the meter is obtained.

For the reconnection of meters for the same consumer upon the same premises, a charge of $1 will be made.

Hydrant Rental and Fire Service Charge.

Private Fire Hydrants.—

Fire hydrants installed on water mains already laid and used for Private Fire Protection, $44 Gross, $40 Net, per year, per hydrant, payable monthly.

—Other private fire protection—Special Rates—

Public Fire Protection Mains.

In cases where water mains are extended by order of the governing authorities of the village, an annual charge of 8.8 cents gross, and 8 cents net per lineal foot shall be made. This charge shall be payable monthly.

In cases where water mains are extended as above, a fire hydrant will be furnished for each 500 lineal feet of pipe so installed, if required. And, if more than one hydrant is required per 500 feet, such additional hydrants shall be $6.50 per annum, payable monthly.

Schedule of Electric Rates, Charges, and Classifications of South Beloit Water, Gas, and Electric Company.

In Force July 1, 1913, and January 1, 1914.

Incandescent Lighting Service.

Lighting Rate No. 1.

Minimum charge per month—$1.00.

Rates per Kilowatt hour:

Primary Rate	13¢	per	Kilowatt	Hour
Secondary Rate	8¢	"	"	"
Excess Rate	5¢	"	"	"

Primary rate based on first thirty hours of use per month of active connected load.

Secondary rate based on next sixty hours' use per month of active connected load.

Excess rate based on all in excess of first ninety hours' use of active connected load.

Discount, 1 cent per kilowatt hour if paid on or before the last discount day following the month in which electricity is consumed.

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Active Connected Load shall in every case be a fixed percentage of the total connected load consisting of lamps, appliances, etc., installed upon consumers' premises.

Class "A" includes residences, dwellings, flats, and private rooming houses. Where a total connected load is equal to or less than 500 watts nominal rate of capacity, 60 per cent of such total connected load shall be deemed active. Where the installation exceeds 500 watts nominal rate of capacity, 33⅓ per cent of such a part of the total connected load over and above 500 watts shall be deemed active.

In class "B," where the total connected load is equal to or less than 2½ kilowatts nominal rate of capacity, 70 per cent of such total connected load shall be deemed active. Where the installation exceeds 2½ kilowatts nominal rate of capacity, 55 per cent of such a part of the total connected load over and above 2½ kilowatts shall be deemed active; provided that lamps used exclusively in space devoted to the storing of goods shall be placed at 20 per cent active and shall not be included in the 2½ kilowatts specified above.

Class "B" shall consist of banks, offices, business and professional, including studies, dressmaking parlors, massage parlors, millinery and hair-dressing establishments, and photograph galleries; wholesale and retail merchandise establishments, such as art stores, bakeries, barber shops, including shoe-shining parlors and public baths, book stores, cigar stores, coffee and tea stores, commission stores, confectionery stores including ice cream parlors, crockery, and china stores, dry-goods stores, drug stores, electrical supply houses, flower stores including greenhouses, furniture stores, gents furnishing stores, including hat stores and haberdashers, grocery stores, hardware stores, harness shops, hay, grain, feed, and coal offices and stores, jewelry stores, meat markets, millinery stores, milk depots, paint and wall paper shops, piano and music stores, picture stores, plumbing shops, saloons, including pool and billiard halls, and adjoining card rooms, shoe stores and shoe repairing shops, stationery stores, tailor shops including dyers, cleaners and clothes pressing establishments, undertakers, upholsterers, wine and liquor stores, theatres, corridors and halls in office and apartment buildings upon separate meters, dance and public halls including lodge and society rooms, restaurants including eating places and lunch wagons,

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depots and public places for the conduct of railroads, street railways, express and telephone business, excluding freight houses, and all other consumers not herein otherwise especially provided for.

In class "C," where the total connected load is equal to or less than 3 kilowatts, nominal rate of capacity, 55 per cent of such total connected load shall be deemed active. Where the installation exceeds 3 kilowatts nominal rate of capacity, 40 per cent of such a part of the total connected load over and above 3 kilowatts shall be deemed active. This class shall include Federal and county buildings, churches, and missions, hotels and clubs, factories, including small industrial establishments such as machine shops, carpenter shops, blacksmith shops, tin shops, and cigar factories, closing not later than 6:00 P. M., private and parochial schools, grain and tobacco elevators, and warehouses, freight and storage warehouses, and stables and garages, both private boarding and livery.

In class "D", 30 per cent of the total connected load shall be deemed active. Such class shall consist of Beloit College.

In class "E" the total connected load shall be deemed active. Such class shall consist of unmetered lighting for signs, outlines, and windows, contracted for upon a yearly basis.

Incandescent Flat Rate.—

Signs, outlines, windows, etc.: Based on burning from dusk to at least 11:00 P. M.

Fixed Charge—5 cents per active 50 watt equivalent per month plus 6 per cent kilowatt hour consumed.

Discount, 1 cent per kilowatt hour on consumption charge, if paid on or before the last discount day following the month in which electricity is consumed.

Incandescent Lighting Rate No. 2.

Demand charge, 10 cents per month per 55 watt opening or less.

Service charge, $1.10 per month.

Rate, 5 cents per kilowatt hour.

Minimum Monthly Bill is Fixed Charge.

Discount, 25 per cent on fixed charge; 25 per cent on current if

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total bill is paid on or before the last discount day following the month in which electricity is consumed.

Note.—The consumer has the option of choosing either of the above rates (No. 1 or No. 2) in the downtown business district.

Electric appliances are rated under No. 1 and No. 2 as the case may require on account of other lighting rate.

Commercial Arc Lamp Rate.

Commercial Arc Lamps for street lighting:

One hour after sunset until 1 o'clock A. M.	$50.00 per year
One hour after sunset, one hour before sunrise	65.00 " "

Power Metered Rate.

Minimum charge per month ..... $1.25 net

Capacity charge, 25 cents per month per active horse power connected.

Current charge,

First 1000 k.w.h.	4¢	net or	5¢	gross
Next 1000 "	3¢	" "	4¢	"
Next 1000 "	2.5¢	" "	3.5¢	"
All over 3000 "	2¢	" "	3¢	"

Discount, 1¢ per kilowatt hour, if paid on or before the last discount day following the month in which electricity is consumed.

Active horse power shall consist of a fixed percentage of the nominal rate of capacity of motor as indicated on the manufacturer's name plate.

The following percentage of such capacity shall be deemed active:

Where installations are under 10–horse power and only one motor is used, 90 per cent.

Where installations are under 10–horse power and more than one motor is used, 60 per cent.

Where installations are 10–horse power or over and less than 20 horse power, irrespective of number of motors, 70 per cent.

Where installations are 20–horse power or over, and less than 50–horse power, irrespective of number of motors, yearly contract basis, 60 per cent.

Where installations are 50–horse power or over and less than 100–horse power, irrespective of number of motors, yearly contract basis, 55 per cent.

Where installations are over 100–horse power, irrespective of number of motors, yearly contract basis, 50 per cent.

Less than yearly contract basis, 70 per cent active.

For the reconnection of motors for the same consumer upon the same premises, a charge of $1 will be made.

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The petitioner put in evidence the following statement of income derived from the present rates and also the income that will be derived from the proposed rates:

Analysis of South Beloit Water Consumption Year Ending 6/20/15.

	Cu. Ft.	Income from Present Rates.	Income Based on Proposed Rates.
Metered	151,200	$ 83.67	$152.30
Service charges		23.00	27.00
Flat		374.34	274.34
Total	$151,200	$481.01	$553.64

Analysis of South Beloit Electric Consumption Year Ending 6/20/15.

	K.W.H.'S.	Income from Present Rates.	Income Based on Proposed Rates.
Power	411,365	$10,763.86	$10,663.24
Commercial Metered	11,971	1,267.98	1,267.98
Residence	9,707	889.84	876.54
Arcs	7,824	356.09	356.09
Flat	600	219.60	219.60
Total	441,467	$13,497.37	$13,383.45

Inasmuch as the rates that the petitioner wishes to put into effect in the village of South Beloit, Illinois, are those established by the Railroad Commission of Wisconsin in the city of Beloit, Wisconsin, where the generating and pumping plants supplying South Beloit with service are located, it appears that the petitioner's request should be granted.

It is therefore *ordered* that the South Beloit Water, Gas, & Electric Company, the petitioner in this case, shall be permitted to amend the present rates of charge for water and electricity in the village of South Beloit, Illinois, to conform to the following:

Schedule of Water Rates, Charges, and Classifications of South Beloit Water, Gas, and Electric Company.

The company shall install meters at its own expense for all consumers having sewer or cesspool connections (other consumers may be metered at company's option) and shall charge for all water passing through meters according to the following schedule of rates:

1. Service charge, payable quarterly in advance.

¾" meter, one consumer on meter	$ 1.25
¾" " " " " "	1.50
1" " " " " "	2.00
1½" " " " " "	3.00
2" " " " " "	4.00
3" " " " " "	6.00

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4" " " " " "	12.00
6" " " " " "	24.00
8" " " " " "	37.50
For each additional consumer on the same meter	.75

Each dwelling, flat, suite, store, tenant, etc., shall be regarded as one consumer in determining the service charge.

2. Output charges per quarter per meter.

First 10,000 cu. ft.	12¢ net	or 13¢ gross	per 100 cu. ft.
Next 15,000 " "	8¢ "	" 9¢ "	" " " "
Next 25,000 " "	6¢ "	" 7¢ "	" " " "
Next 50,000 " "	5¢ "	" 6¢ "	" " " "
Next 100,000 " "	3¢ "	" 4¢ "	" " " "
Over 200,000 " "	1½¢ "	" 2⅛¢ "	" " " "

Discount. The company shall bill all consumers at the gross rate, and the difference between the gross and net rate above specified, or one cent per 100 cu. ft., shall constitute a discount for prompt payment.

When unable to read the meter, a minimum charge will be made which will be adjusted when the reading of the meter is obtained.

For the reconnection of meters for the same consumer upon the same premises, a charge of $1 will be made.

All consumers without sewer or cesspool connection or who are not supplied through a meter shall pay a rate of $1.50 per quarter. The company may install meters upon such flat rate consumers at its option.

3. Building Rates.

Stone per cord	10¢
Brick per M.	10¢
Plaster per 100 sq. yd.	15¢
Concrete per cu. yd.	3¢

The company may, however, at its option, measure the water for building purposes, and charge for the same at the regular meter rates.

4. Hydrant Rental and Private Fire Protection Charge.

Private Fire Hydrants.—

Fire hydrants installed on water mains already laid and used for private fire protection, $44 gross, $40 net, per year, per hydrant, payable monthly.

Connections for Private Fire Protection Service. Payable Quarterly.

2 inch connection (or smaller)	$ 6.50 gross—	$ 6.25 net
2½ " "	10.25 "	10.00 "
3 " "	12.75 "	12.50 "
4 " "	19.00 "	18.75 "
6 " "	25.25 "	25.00 "
8 " "	37.75 "	37.50 "

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Discount. The company shall bill all consumers at the gross rate, and the difference between the gross and net rate above specified, or 25 cents per connection, shall constitute a discount for prompt payment.

5. Public Fire Protection Mains.

In cases where water mains are extended by order of the governing authorities of the village, an annual charge of 8.8 cents gross, and 8 cents net, per lineal foot, shall be made. This charge shall be payable monthly.

In cases where water mains are extended as above, a fire hydrant will be furnished for each 500 lineal feet of pipe so installed, if required. And, if more than one hydrant is required per 500 lineal feet, such additional hydrants shall be $6.50 per annum, payable monthly.

Schedule of Electric Rates, Charges and Classifications of South Beloit Water, Gas, & Electric Company.

Incandescent Lighting Service.

Lighting Rate No. 1.

Minimum charge per month, $1.00.

Rates per Kilowatt Hour:

Primary Rate	13¢	per kilowatt hour
Secondary Rate	8¢	" " "
Excess Rate	5¢	" " "

Primary rate based on first thirty hours of use per month of active connected load.

Secondary rate based on next sixty hours' use per month of active connected load.

Excess rate based on all in excess of first ninety hours' use of active connected load.

Discount, 1 cent per kilowatt hour if paid on or before the last discount day following the month in which electricity is consumed.

Active connected load shall in every case be a fixed percentage of the total connected load consisting of lamps, appliances, etc., installed upon consumers' premises. Incidental power appliances, such as flat irons, toasters, small fans, etc., to the amount of $1,000 watts rating shall not be considered in determining the active load.

Class "A" includes residences, dwellings, flats, and private

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rooming houses. Where a total connected load is equal to or less than 500 watt nominal rate of capacity, 60 per cent of such total connected load shall be deemed active. Where the installation exceeds 500 watts nominal rate of capacity, 33⅓ per cent of such a part of the total connected load over and above 500 watts shall be deemed active.

In class "B", where the total connected load is equal to or less than 2½ kilowatts nominal rate of capacity, 70 per cent of such total connected load shall be deemed active. Where the installation exceeds 2½ kilowatts nominal rate of capacity, 55 per cent of such a part of the total connected load over and above 2½ kilowatts shall be deemed active; provided that lamps used exclusively in space devoted to the storing of goods shall be placed at 20 per cent active, and shall not be included in the 2½ kilowatts specified above.

Class "B" shall consist of banks, offices, business and professional, including studios, dressmaking parlors, massage parlors, millinery and hair-dressing establishments, and photograph galleries; wholesale and retail merchandise establishments, such as art stores, bakeries, barber shops, including shoe-shining parlors and public baths, book stores, cigar stores, coffee and tea stores, commission stores, confectionery stores including ice cream parlors, crockery and china stores, drygoods stores, drug-stores, electrical supply houses, flower stores, including greenhouses, furniture stores, gents furnishing stores, including hat stores and haberdashers, grocery stores, hardware stores, harness shops, hay, grain, feed and coal offices and stores, jewelry stores, meat markets, millinery stores, milk depots, paint and wall paper shops, piano and music stores, picture stores, plumbing shops, saloons, including pool and billiard halls, and adjoining card rooms, shoe stores and shoe repairing shops, stationery stores, tailor shops including dyers, cleaners and clothes pressing establishments, undertakers, upholsterers, wine and liquor stores, theaters, corridors and halls in office and apartment buildings upon separate motors, dance and public halls, including lodge and society rooms, restaurants, including eating places and lunch wagons, depots and public places for the conduct of railroads, street railways, express and telephone business, excluding freight houses, and all other consumers not herein otherwise especially provided for.

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In class "C," where the total connected load is equal to or less than 3 kilowatts, nominal rate of capacity, 55 per cent of such total connected load shall be deemed active. Where the installation exceeds 3 kilowatts nominal rate of capacity, 40 per cent of such a part of the total connected load over and above 3 kilowatts shall be deemed active. This class shall include Federal and county buildings, churches and missions, hotels and clubs, factories, including small industrial establishments such as machine shops, carpenter shops, blacksmith shops, tin shops, and cigar factories, closing not later than 6:00 P. M., private and parochial schools, grain and tobacco elevators, and warehouses, freight and storage warehouses, and stables and garages, both private, boarding, and livery.

In class "D," 30 per cent of the total connected load shall be deemed active. Such class shall consist of Beloit College.

In class "E," the total connected load shall be deemed active. Such class shall consist of unmetered lighting for signs, outlines, and windows, contracted for upon a yearly basis.

Incandescent Flat Rate.

Signs, Outlines, Windows, etc.: Based on burning from dusk to at least 11:00 P. M.

Fixed Charge—5 cents per active 50 watt equivalent per month plus 6 cents per kilowatt hour consumed.

Discount, 1 cent per kilowatt hour on consumption charge, if paid on or before the last discount day following the month in which electricity is consumed.

Incandescent Lighting Rate No. 2.

Demand Charge, 10 cents per month per 55 watt opening or less.

Service Charge, $1.10 per month.

Rate, 5 cents per kilowatt hour.

Minimum Monthly Bill is Fixed Charge.

Discount, 25 per cent on fixed charge; 25 per cent on current if total bill is paid on or before the last discount day following the month in which electricity is consumed.

Note:—The consumer has the option of choosing either of the above rates (No. 1 or No. 2) in the downtown business district.

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Electric appliances are rated under No. 1 and No. 2 as the case may require on account of other lighting rate.

Commercial Arc Lamp Rate.

Commercial Arc Lamps for Street Lighting:

One hour after sunset until 1 o'clock A. M. ..... $50.00 per year
One hour after sunset, one hour before sunrise ..... 65.00 " "

Commercial Power.

Service charge, 25 cents net per active horse power per month.

Output charge:

First	1,000	kw.	hrs.	per	month	4	cts.	net	or	5	cts.	gross	per	kw. hr.
Next	1,000	"	"	"	"	3	"	"	"	4	"	"	"	" "
Next	1,000	"	"	"	"	2½	"	"	"	3½	"	"	"	" "
Next	17,000	"	"	"	"	2	"	"	"	3	"	"	"	" "
Next	20,000	"	"	"	"	1¾	"	"	"	2¾	"	"	"	" "
Over	40,000	"	"	"	"	1½	"	"	"	2½	"	"	"	" "

Active connected horse power shall be determined as follows:

Where installations are under 10 h.p. and only one motor is used, 90 per cent active; under 10 h.p. and more than one motor is used, 80 per cent active.

Where installations are 10 h.p. or over and less than 20 h.p. irrespective of number of motors, 70 per cent active.

*Where installations are 20 h.p. or over and less than 50 h.p. irrespective of number of motors, yearly contract basis, 60 per cent active.

*Where installations are 50 h.p. or over and less than 100 h.p. irrespective of number of motors, yearly contract basis, 55 per cent active.

*Where installations are over 100 h.p., irrespective of number of motors, yearly contract basis, 50 per cent.

*Less than yearly contract basis 70 per cent active.

Minimum power bill shall be $1.25 net per month.

Discount.—Company shall bill all power consumers at the gross rate and the difference between the gross and net rates shall constitute a discount for prompt payment.

Reconnection of Meters.—For the reconnection of a meter for the same consumer upon the same premises within one year of disconnection, a charge of $1 is deemed reasonable.

And it is further *ordered* that these rates as fixed shall be put in effect on the 20th day of August, 1915.

By order of the Commission at Springfield, Illinois, this 5th day of August, 1915.

P.U.R.1915E.

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INDIANA PUBLIC SERVICE COMMISSION.

HARRY D. PURVIANCE et al.

v.

CITY OF ATTICA, INDIANA.

[No. 1415.]

Service — Unreasonableness — Inadequacy — Municipal lighting plant — Improvements ordered.

A city operating an electric plant and furnishing light as a public utility was ordered to make certain specified changes in its plant in order to render proper service, it being found that the service afforded by the existing plant was unreasonable, insufficient, and inadequate.

[August 5, 1915.]

COMPLAINT as to the inadequacy of the service of a municipal electric lighting plant, as to discrimination in rates, and as to the practice of employees of the plant in engaging in private business competition with other citizens of the city; complaint as to discrimination and as to practice of employees in engaging in private business not sustained; complaint as to inadequacy of service upheld and city required to make certain improvements on its plant specified in detail in the order.

By the **Commission**: Complainants, eleven in number, citizens and taxpayers of the city of Attica, Indiana, complain of the defendant, and allege generally that the city of Attica, Indiana, has for several years last past owned, and does now own, operate, and control a combined electric and water plant, and furnish to the citizens of said city their light and water by means of said plant; that at the time of the filing of the complaint, and for several months prior thereto, the said city, in furnishing said light as a public utility, has furnished such service in an unreasonable and insufficient and inadequate manner as follows:

First. The voltage of the electric plant of said city is exceedingly irregular, and is not stable and regular, thereby causing great damage at different times to electric light lamps, electric irons and electrical appliances of all kinds, as well as causing the light and power thus furnished to be insufficient at times; that

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said voltage is irregular practically every night and day, and not merely occasionally.

Second. The capacity of the plant of said city is insufficient for the demands that are justly made upon it by the public, and which by law it is required to serve.

Third. The electric plant machinery and appliances are not up to date; the later inventions in connection with electric light plants which have proved to be profitable, useful, and necessary are not in use in said plant, and as a result the service rendered to the patrons is inferior and insufficient.

Fourth. Rates are unfair in that to some customers flat rates are given, while of others meter rates are required.

Fifth. The plant belongs to the city, and yet its employees are allowed to engage in private work in competition with dealers in the city to such an extent that their physical condition is affected, so that the best services are not given to the plant, and their efficiency is impaired.

Sixth. That said plant belongs to the city and is therefore required by law to furnish adequate service for all the people in said city, but that said plant uses what is commonly known and called in furnishing electric lights the direct current system, thereby furnishing irregular service. There is not sufficient quantity furnished for the use and needs of the residents within said city by reason of said direct current, whereas if the alternating current were used it would be adequate and regular, and there would also be sufficient power furnished corporations, business plants, and residences in the immediate vicinity of said city at a reasonable profit to the said city.

The complainants further allege that no other utility furnishes electrical service to said city of Attica, and said petitioners are interested in respect to the electrical service so furnished them.

Prayer for an investigation of said electric light plant by the Commission, and that said city be required to so renew and readjust its entire lighting plant system as to require said city to establish a regular voltage, furnishing adequate service to all consumers without discrimination.

At a hearing held in this case at Attica, on May 5, 1915, it was shown that the plant was constructed twenty-seven years ago; that the same has been enlarged and in many particulars renewed

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since its installation. The plant, with a few exceptions, is in good condition at this time. The boiler plant is in good condition, and properly performs its functions, and only requires proper maintenance to be efficient for a period of twenty-five years. Four engines are in use, two of which have been installed eight years, one for fourteen years, and one for sixteen years, and are in good condition. The generators, with one exception, are in good condition. The one known as the Edison bi-polar generator is practically obsolete, and should be replaced with another machine.

The evidence shows that the voltage furnished is very irregular, and fluctuates to such an extent that poor service is furnished, and in instances electrical appliances have been damaged to the extent of material injury. Other results from the irregular service rendered have been the blackening of lamps and insufficient lighting.

It was shown that the voltage would vary as much as 20 volts within a short period of time, thereby rendering the illumination from electric lamps irregular and fluctuating, and very undesirable for domestic use at times.

It was disclosed by the evidence that there are several motors of considerable capacity on the circuit supplying residential lighting, and that when these motors were cut in the voltage would drop, and when not in use the voltage would rise. Two large motors are used to operate elevators, and their use of the current is quite irregular, producing a changing voltage that operates to a disadvantage to domestic users of the current in the way of poorer lights, and in injury to their electrical appliances such as irons, hot plates, fans, etc.

The experts in electrical engineering who testified in the case agreed that the motors, at least those of 2 h.p. and above, should be supplied by separate circuit, thereby reducing the uneven voltage supplied domestic consumers; that in order to improve the plant and enable it to furnish adequate and proper service, it would be necessary for the city to install one 100 k.w. 3-wire, 125–250 volt, belt-driven generator, and switch board for control of same, this unit to be connected by belt to the 140 h.p. Erie-Ball engine now installed; that a balancing set for the 125–250 volt, 3-wire system of such capacity that it will be capable of

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taking care of 10 per cent of that portion of the load that is subject to an unbalanced condition be installed; exchange the armature in the two direct connected generators for 3-wire armature, converting these two machines into two 100 k.w., 3-wire, 125–250 volt generators, in order to provide one reserve unit; rearrange the switch board so that any two of the machines can be operated in parallel in the event that the peak load would demand more than 100 k.w.; change the present transmission and distribution system of the commercial and residential lighting and power for a 3-wire, 125–250 volt circuit; balance these circuits as nearly equal as possible, and where there is now installed a 250 volt circuit and no equipment such as irons, hot plates, etc., of 250 volts are in use, change such circuits to 125 volts; change the meters and lamps to conform, and at the expense of the city; all motors that are of 2 h.p. and larger, now installed, that can be changed to 250 volts, should be connected across the outside wire of the 3-wire system. All motors purchased for future installation of 2 h.p. or larger should be for 250 volts. Steam and electric graphic recording instruments to be installed, which will record the steam pressure and the voltage generated by the machines.

It was further shown by the evidence that the city had published uniform rates applicable to its electric service, the same being published in two schedules. Schedule A, applicable to lighting rates, provides a charge of 8 cents per k.w.h. up to and including 100 k.w.h., and for all excess current used in any one month, 7 cents per k.w.h. Schedule B, power rates, provides:

For	the	first	100	k.w.	per	month	.....	6	cents	per.	k.w.h.
"	"	next	100	"	"	"	.....	5	"	"	"
"	"	"	200	"	"	"	.....	4	"	"	"
"	all	over	400	"	"	"	.....	3	"	"	"

For electric light where the meter is not used:

25 cents per month for 25 watt lamp.
75 cents per month for 40 watt lamp.

This is regarded as a satisfaction of so much of the complaint as charges discrimination and unfairness as to rates, and no evidence was introduced in serious criticism of such schedules.

The further charge, that employees of the plant are allowed to engage in private business competition with other citizens of the city, thus impairing the efficiency of their services, was not, we

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think, sustained to the extent of requiring any order at the hands of the Commission.

With the modifications made in the plant as herein stated, we are of the opinion that the plant will be adequate to furnish efficiently all the electric current for which there will be any demand by the citizens of the city of Attica.

And the Commission having had this matter under consideration, it is therefore now *ordered* that the city of Attica shall purchase, install, and operate in its electric light plant one 100 k.w., 3-wire, 125–250 volt, belt-driven generator and switch board for control of same, and connect this unit by belt to the 140 h.p. Erie-Ball engine now installed in said city's electric light plant; purchase and install a balancing set for the 125–250 volt, 3-wire system of such capacity that it will take care of 10 per cent of that portion of the load that is subject to an unbalanced condition.

It is further *ordered* that said city exchange the armature in the two direct current generators now in use in this said plant for a 3-wire armature, converting these two machines into two 100 k.w., 3-wire, 125–250 volt generators to provide one reserve unit; and to rearrange the switch board in said electric light plant so that any two of the generating machines can be operated in parallel in the event that the peak load demand would be more than 100 k.w.

It is further *ordered* that said city shall rearrange the present transmission and distribution system of the commercial and residential lighting and power circuits for a 3-wire, 125–250 volt circuit, and balance these circuits as nearly equal as possible; and where there is now installed a 250 volt circuit and no equipment such as irons, hot plates, etc., of 250 volts in use, change such circuits to 125 volts; and in making the necessary exchange of meters and lamps, the cost of the same shall be borne by the city.

It is further *ordered* that all motors that are of 2 h.p. and over, now installed, that can be changed to 250 volts, shall be connected across the outside wire of the 3-wire system, and all motors for further installation of 2 h.p. or more shall be for 250 volts.

It is further *ordered* that said city shall install a steam and

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electric graphic recording instrument in the plant that will correctly record the steam pressure upon the boilers and the voltage generated by the machines, and maintain the same in a secure manner, and that the records so made shall be kept by said city for future reference and inspection by the Commission.

It is further *ordered* that said city shall proceed to make such changes, alterations, or additions to its said electric plant without delay, and to that end it shall proceed, as by law required, to secure bids for such improvements, changes, alterations, and installations not later than September 10, 1915.

It is further *ordered* that said city shall complete and have in use the changes, additions, and alterations as herein required, not later than November 1, 1915.

MINNESOTA RAILROAD AND WAREHOUSE COMMISSION.

IN RE NORTHWESTERN TELEPHONE EXCHANGE COMPANY.

Telephones — Consent of Commission to operate exchange — When not requisite.

1. A telephone company which has obtained a franchise from a municipality before the effective date of a statute providing that any telephone company operating under any existing license, permit, or franchise, or which shall hereafter, before the taking effect of the act, acquire such license, permit, or franchise, may surrender the same for an indeterminate permit, is not required to obtain the consent of the Commission before being permitted to construct and operate an exchange thereunder.

Discrimination — Preliminary free service.

2. The giving of free service to the patrons of a telephone company until 300 subscribers have been secured is a violation of a statute providing that a telephone company may furnish service free or at reduced rates to its officers, agents, or employees in furtherance of their employment, but requiring it to charge full schedule rates without discrimination for all other services.

[August 14, 1915.]

PETITION by the Northwestern Telephone Exchange Company requesting the Commission to enjoin the Minnesota Telephone Company from locating or operating an exchange in the city of Brainerd until receiving the consent of the Commission therefor;

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petition dismissed on the ground that such consent was not necessary, but an agreement by which the company promised to furnish free service until 300 subscribers had been obtained held illegal.

The appearances are set out in the opinion.

By the Commission: A hearing was duly held before the Commission on the 31st day of July upon the order to show cause, which was issued upon the filing of a petition by the Northwestern Telephone Exchange Company requesting the Commission to enjoin the Minnesota Telephone Company from locating or operating an exchange within the city of Brainerd until it had received the consent of the Commission as provided by § 13 of chapter 132 of the Laws of 1915. The Northwestern Telephone Exchange Company was represented by E. A. Prendergast, attorney, and the Minnesota Telephone Company by C. B. Randall, attorney. Upon the petition, affidavits, and arguments the Commission finds as follows:

1. That the Northwestern Telephone Exchange Company is a corporation duly organized and existing under and by virtue of the laws of the state of Minnesota, and is carrying on a general telephone business throughout said state and other states, and that it now operates a telephone exchange in the city of Brainerd, Minnesota, and has owned and operated said exchange for many years last past.

2. That the Minnesota Telephone Company is a corporation organized under the laws of the state of Minnesota, and is carrying on a telephone business in the vicinity of Brainerd.

3. That on the 7th day of June, A. D. 1915, the said Minnesota Telephone Company was granted by the city council of the city of Brainerd, Minnesota, a franchise authorizing it to install a telephone exchange system in said city of Brainerd, and to furnish telephone service thereover; that said franchise was duly signed by the mayor and published on June 12, 1915, and that on the 21st day of said month the company duly filed its acceptance of said ordinance with the city clerk. That thereafter the said company had plans prepared and submitted to the proper city authorities covering the use of the streets of the city of Brainerd and the construction of its exchange; that it imme-

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diately ordered material necessary for the construction of said exchange, and on the 26th day of June, A. D. 1915, commenced construction, and on the 30th day of June, A. D. 1915, it had installed within said city 22 telephones and had commenced operation of the same; that since said date the installation of said exchange has continued, and the underground work within said city is practically completed, and a large expense has been incurred in doing all of said work; that in all things the said telephone company has acted promptly and in good faith.

4. That said Minnesota Telephone Company is soliciting and installing telephone instruments in said city of Brainerd without charge, and under an agreement with its patrons to make no charge until at least 300 telephone instruments are so installed and in operation, and that a tariff showing that fact has been filed with this Commission.

[1] As conclusions of law, the Commission finds that said Minnesota Telephone Company is not required to secure its consent before it is permitted to construct and operate an exchange in Brainerd, Minnesota, and also that said company cannot give free service to its subscribers in the city of Brainerd.

Chapter 132 of the laws of 1915 was approved on the 16th day of April and became effective July 1st of this year. Section 15 or such act provides that "any telephone company operating under any existing license, permit, or franchise, or which shall hereafter, before the taking effect of this act, acquire any license, permit, or franchise, may, upon filing with the clerk of the municipality which granted such franchise a written declaration that it surrenders such license, permit, or franchise, receive in lieu thereof, an indeterminate permit as defined in this act; and such telephone company shall thereafter hold such permit under all the terms, conditions, and limitations of this act. Upon filing such written declaration by the telephone company, the clerk of the municipality shall file with the Commission a certificate showing that fact and the date thereof, and thereupon it shall receive an indeterminate permit from the Commission conferring the same rights as if originally granted under this act."

Under this section the Minnesota Telephone Company has the right to surrender the franchise which it received from the city of Brainerd and secure in lieu thereof an indeterminate permit

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from the state. The telephone company need not secure the consent of the Commission as provided in § 13 of the act.

[2] Section 11 of the act controls the question of free service. It reads as follows:

"A telephone company may furnish service free or at reduced rates to its officers, agents, or employees in furtherance of their employment, but it shall charge full schedule rates without discrimination for all other services."

The attempt to give free service until 300 subscribers have been secured is a direct violation of the act. It appeared in the discussion that telephone companies do frequently give free service in an effort to install an exchange until a certain number of subscribers have been secured. This has been considered as a promoting expense. The statute, however, has made that practice impossible. This decision does not foreclose future consideration by the Commission of the right of telephone companies to give free or reduced service to the state, municipalities, schoolhouses, or public or quasi public institutions.

By order of the Commission.

MONTANA RAILROAD COMMISSION.

FRANK BEAULEIU et al.

v.

MISSOULA STREET RAILWAY COMPANY.

[Docket No. 478; Report and Order No. 128.]

Service — Duty to render — Safety — Service rendered at loss.

1. An interurban railway company, so long as it remains in business, must so operate its road as to carry passengers with safety and to protect them from ruffians and obscene and offensive conduct, even if the road is operated at a loss.

Commissions — Policy — Operation at loss — Distinction between safety and adequacy of service.

2. The Montana Commission, in dealing with a complaint as to the service and rates of an interurban railway which was operated at a loss, stated that it would make findings in the nature of orders only as to the safety of the service and as to discrimination in rates, but its findings as to mere adequacy of service would be made in the form of suggestions.

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Service — Interurban railways — Conductors as well as motormen on cars.

3. The Montana Commission refused to order an interurban railway which was operated at a loss to operate its cars in charge of a conductor as well as of a motorman, so as to protect passengers from drunken and disorderly men riding on the cars, since the Commission was of the opinion that the situation could be properly taken care of by the motorman under orders from the company, with the aid of passengers in extreme cases.

Service — Interurban railways — Time and place for sale of tickets.

4. An interurban railway company which offers round-trip tickets at a reduced rate found to be reasonable was ordered to keep such tickets on sale at suitable places during the fifteen-minute interval prior to the departure of each car.

Service — Interurban railways — Place for sale of tickets — Cigar store.

5. A cigar store is not a suitable place to require the traveling public to enter in order to purchase railway tickets.

[August 5, 1915.]

COMPLAINT as to the rates and service of the Missoula Street Railway Company. In view of the fact that the railway was operated at a loss, the Commission refused to make any orders covering the alleged inadequacy of service, and suggested that an early car be restored for the convenience of passengers who, relying upon such car, had purchased homes along the lines of the railway, and that storm windows be installed on its cars during the winter months; allegations as to the safety of gratings over the windows, inadequate station facilities, and the necessity of having a conductor as well as a motorman on the cars were dismissed as unproved. The company was ordered to keep round-trip tickets on sale at suitable places during the fifteen-minute interval prior to the departure of each car.

The appearances are set out in the opinion.

By the **Commission**: Hearing was regularly held at Missoula, Montana, May 28, 1915; represented: Complainants by Hall & Whitlock (Mr. Charles H. Hall); defendant by W. M. Bickford, W. L. Murphy. Commissioners: Hall, Morley, McCormick.

The defendant, the Missoula Street Railway Company, is a common carrier engaged in the business of operating an electric line in Missoula and environs. The complaint in this cause is directed wholly against the service afforded by the defendant,

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between Missoula and Bonner. The distance from Bonner to Missoula is 8.8 miles. Bonner and Milltown are situated very close together, and are settlements contiguous to the sawmills of the Anaconda Copper Mining Company and the Western Lumber Company. The combined population of the two places is 759. Missoula is the retail and shopping point for the inhabitants of both Bonner and Milltown.

The complaint raises the following issues:

1. Unreasonable curtailment of service;
2. Necessity for conductor on cars in addition to motorman;
3. Danger in case of accident to gratings over car windows;
4. Lack of heat on cars during cold weather;
5. Failure of defendant to keep round-trip tickets on sale, at all times and at suitable places, and unreasonable and excessive fares charged to cash fare patrons;
6. Undesirable waiting-room facilities at Bonner.

The defendant company filed a denial of the material allegations, and in addition pleaded that its business was unprofitable and was decreasing.

[1] The uncontroverted testimony on behalf of the defendant established the fact that the deficit on operating the street railway plant at Missoula, including the suburban and city lines, for the entire year of 1914, was $11,589.17 and the operating deficit from the time of its inception to the end of the year 1914 was $40,647.61. The revenue for the first four months of 1915 was even more discouraging than revenue for the same months of 1914. Under these circumstances, which are not disputed, it is doubtful if this Commission has the authority to make any order applicable to the defendant which would add any additional burdens to it. If the business is operated at a loss, there could certainly be no equity in this body taking any steps to make the losses any larger. Irrespective of these conditions, however, there are certain duties which the defendant, as a common carrier, owes to its patrons, and those duties must be fulfilled so long as it continues to operate. These duties are inherent to its existence as a common carrier, and no legal excuse could be given for the nonperformance of the same. So long as the defendant remains in business, a certain outlay of money is necessary to transact its business, however small that business

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may be. If the operating expenditures are being expended in a way that does not give the best possible service to the public, the Commission can then step in and make an order indicating some other method or schedule of rendering its service to the public, without increasing its financial burdens. Of course this common carrier owes its duty to the public, if it transports it at all, to do so safely, regardless of expense. It is also in duty bound to see that its passengers, while under its care, are protected from ruffians, and that they are not annoyed by any obscene and offensive conduct.

[2] In view of all these facts, the finding which this Commission makes will be in the nature of an order, so far as the matter of safety and discrimination is concerned, but in so far as any of the other conclusions herein reached might add any additional burdens to the defendant, the conclusions are made more in the nature of a suggestion, with the hope that the defendant will find a way of incorporating these suggestions into its business without adding to its already cumbersome, financial burdens. By far the most important point brought up by the complainants is the matter of unreasonable curtailment of service. It appears that street car service between Missoula and Bonner, at the time of the hearing, was rendered from the following schedule:

Street Car Schedule between Missoula and Bonner.

Lv.	Missoula	7:00	A.M.	Lv.	Bonner	7:30	A.M.
"	"	8:00	"	"	"	8:30	"
"	"	9:00	"	"	"	9:30	"
"	"	11:00	"	"	"	11:30	"
"	"	1:00	P.M.	"	"	1:30	P.M.
"	"	3:00	"	"	"	3:30	"
"	"	4:00	"	"	"	4:30	"
"	"	5:00	"	"	"	5:30	"
"	"	6:00	"	"	"	6:30	"
"	"	7:00	"	"	"	7:30	"
"	"	9:00	"	"	"	9:30	"
"	"	11:00	"	"	"	11:30	"

Extra car leaves Bonner at 8:00 on school days.

In addition to the above, the Northern Pacific Railway Company also operates two trains.

Northern Pacific Schedule.

No. 258	No. 256		No. 255	No. 257
Lv. 4:30 P.M.	Lv. 8:45 A.M.	...Missoula...	11:30 A.M.	10:30 P.M.
4:42 P.M.	8:57 A.M.	...Bonner...	Lv. 11:10 A.M.	Lv. 10:18 P.M.

The objection to the aforesaid schedule is directed to the car

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which leaves Missoula at 7 o'clock in the morning. It appears that some time prior to the filing of the complaint, and during the time that the mills at Bonner and Milltown were running under full force, a schedule was in effect which provided for a car which left Missoula at 6 o'clock in the morning and got to Bonner at 6:30, carrying passengers from Missoula and from intermediate points between Missoula and the mill towns, who were working in the mills which opened at 7 o'clock in the morning. Some of the passengers who had used the 6 o'clock car, assuming that the schedule would be permanent, had purchased suburban property at a place called Pine Grove, between Missoula and Bonner. These parties have established their homes, depending upon the use of a street car which would carry them to Bonner prior to 7 o'clock in the morning, when it was necessary for them to enter upon their daily labors in the mills. Since the new schedule has been placed into effect, providing for the first car on the line leaving Missoula at 7 o'clock in the morning, parties owning homes in Missoula were either forced to give up their work at the mills, or to abandon their homes in Missoula and seek places to live in Bonner or Milltown. Those persons residing in Pine Grove were forced to provide private means of conveyance to their work. Pine Grove is about 2 miles from Bonner. Formerly an engine made the trip from Missoula over the Chicago, Milwaukee, & St. Paul Railway to Bonner, at 6 o'clock in the morning, but owing to logging operations or other work on the Big Blackfoot Railway, the trips of this engine from Missoula have been discontinued. The car which has been running between Missoula and Bonner is considerably larger than the car used on the lines of the company within the city limits, and according to the testimony it is more expensive to operate. This car has been doing the suburban business, leaving Missoula for Bonner, then returning back to Missoula and making a suburban run on the opposite side of the city in the direction of Fort Missoula, thence returning to the city and alternating back and forth between Bonner and Fort Missoula.

It would appear that while the number of persons who have been using the car to Bonner on the early morning run are rather few; yet, on the other hand, they have made investments in view of this schedule, and the Commission strongly urges that an at-

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tempt should be made to remedy the injury which is apparently being done them. Provision should be made to run a car from Missoula to Bonner, during the times that either of the mills is running to reasonable capacity, arriving at Bonner in time for the laborers to be at their posts at the beginning of the day's work.

[3] The second point brought to our attention was the necessity for a conductor on the car, in addition to the motorman. There was some evidence introduced relative to drunken and disorderly men riding on these cars, particularly late at night. It is rather singular that at no time was a complaint made by the passengers, either to the company or to the peace officers of Missoula county. While the defendant owes it to its patrons to see that drunken and disorderly men are not permitted to enter its cars, and should give its motormen specific instructions along those lines, it would appear that the passengers themselves, who are a part of our form of government, would take steps to have the cause of this complaint eliminated. We do not believe that it is necessary in a short run of 8 miles between Missoula and Bonner, and in a civilized community, for the defendant to hire a special peace officer to be put upon its cars. There is no reason why the motorman should not be able to handle the situation, under instructions from the management, and no drunken man should be allowed to board the car at any point. If an intoxicated man should escape the observation of the motorman, or if a disturbance should be started upon the car, the motorman would have a legal right to remove the objectionable person from his car, and we believe that there would be enough red-blooded men among the passengers who would gladly lend their assistance to the motorman in extreme cases, rather than see the women and children insulted and scandalized, as these complainants have alleged.

The third point of the complaint was directed against the danger in case of accident, by reason of gratings over the car windows. It was complained that these gratings would be extremely dangerous in case the car was wrecked or went over an embankment into the river. From the examination it was stated that there was only from 8 to 10 inch space between the grating and the top of the window casing. The complainants

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did not seem to understand the adjustment of the windows. The Commission made a personal inspection, and found that for the protection of small children it was necessary to have the grating on the lower part of the window. By raising the lower sash it automatically raised the upper sash and both of them disappeared into the roof of the car, working on the same principle as a roll-top desk, leaving an open space of about 30 inches between the top of the grating and the upper part of the window casing.

The fourth allegation was made with reference to lack of heat on cars during the extreme cold weather. The car operated on the Missoula-Bonner run was designed and built especially to handle the traffic on the Bonner run. It is a semiconvertible car, suitable for summer and winter use. It has a seating capacity of fifty-two passengers, which includes a smoking apartment located on the rear end of the car, and with a seating capacity for about ten or twelve people. The car is heated with the American Consolidated Car Company's latest type of electric heaters installed under every other seat. A number of feet of radiation is supposed to keep the car comfortable during all ordinary winter weather in Montana. It is impossible during a continuous run of extreme cold weather, owing to the number of stops when the doors are opened to allow passengers to leave or board the car, to keep the temperature up to the minimum of 50 degrees, which is required by law. The Commission believes that storm windows would aid materially in keeping the car comfortable, and that the street car company should install them during the winter months.

[4, 5] The complainants also complained of the failure of the defendant to keep round-trip tickets on sale at all times and at suitable places. It appears that the defendant charged a fare of 20 cents one way. If a round-trip ticket is purchased, the fare is 30 cents, making a 15 cent fare each way. In no case is the 15 cent fare permitted unless the passenger purchases a round-trip ticket. The Commission will hold that the one-way fare of 20 cents and the round-trip ticket of 30 cents, where a round-trip ticket is purchased, are reasonable charges for the service. It does appear, however, that the defendant and its agents have at times failed to keep these tickets accessible to

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purchasers. In Missoula the tickets are kept on sale at the street railway company's office, which is closed at night, and at the Kelly cigar store. At Bonner the tickets are kept on sale at the waiting room, which is the property of the defendant, but has been leased and is in charge of Mrs. Godson and her daughter. Mrs. Godson keeps a candy and cigar counter in the waiting room, and for the use of the building she pays the defendant $10 per month, and undertakes to carry a supply of tickets for the purpose of sale without a profit to herself. The tickets on sale in a cigar store have not been placed in a suitable place for the traveling public. Cigar stores are not frequented by women, and so long as the sale of tickets is kept in a cigar store to the exclusion of a more desirable place, there will be meritorious complaints. There is no objection to the defendant keeping these tickets on sale in the future in a cigar store, if it so desires, as such a place is open more hours of the day than most any other class of business, but the defendant, in addition to this, should keep its tickets on sale at some other convenient and comfortable place where all patrons can purchase the same without embarrassment. Tickets should be available for purchase at such place during the fifteen-minute interval prior to the departure of each car. It further appears that at times the supply of tickets at Bonner has been allowed to become exhausted. It seems that Mrs. Godson is permitted a credit of $30 on tickets, and sometimes when the tickets are almost exhausted, there is a little extraordinary rush of business, and before a new supply is delivered, the supply on hand is gone, by reason of which patrons are forced to pay the cash fare of 20 cents each way. This doubtless leads to some contention, and is not satisfactory to the traveling public. With a little care the defendant could very easily eliminate this complaint without any cost to itself, or either extending the amount of tickets delivered to Mrs. Godson, or by requiring her to report at the end of each day's business the amount on hand, to the end that a better check might be kept on the situation.

The Commission made a special trip to Bonner, and found the car operated on the Bonner run to be up to date in every particular. Service was good, and the station and platform at Bonner met all requirements, and was in first-class condition.

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Therefore, in view of the evidence and the examinations made by the Commission, and in view of the foregoing statement of findings.

It is *ordered* that that portion of the complaint praying for an order requiring the defendant to operate its cars, under charge of a conductor in addition to the motorman, be denied; and that that portion of the complaint praying that defendant be required to remove the gratings from car windows be denied; and that that portion of the complaint containing the prayer for more desirable waiting-room facilities at Bonner be denied.

It is further *ordered* that the defendant keep tickets on sale at the waiting room at Bonner and at Missoula, during the fifteen-minute period prior to the departure of each car running between the two places, to the end that no discrimination exists, and that at Missoula the tickets be placed on sale at some convenient and suitable place where all persons may feel free to enter and purchase the same.

The Commission would urge the adoption of a new schedule for the early morning car leaving Missoula for Bonner, and the installation of storm windows on the Bonner car during the winter months, in accordance with the suggestion set forth in the above findings of fact.

It is further *ordered* that the secretary of the Board of Railroad Commissioners serve a true and certified copy of this report and order on the defendant, and that same shall become effective twenty days after such service.

Board of Railroad Commissioners of the State of Montana.

Note.—For another case making a distinction as to the character of service performed by public utilities and the higher obligation to perform some duties than others, see State ex rel. Railroad Comrs. v. Florida East Coast R. Co. P.U.R. 1915C, 207.

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NEW HAMPSHIRE PUBLIC SERVICE COMMISSION.

IN RE MANCHESTER TRACTION LIGHT & POWER COMPANY.

[D-266; Order No. 438.]

Security issues — Purpose — Additions and improvements — Sale price.

The Manchester Traction Light & Power Company was authorized by the New Hampshire Commission to issue $1,000,000, three-year notes, the proceeds to be used in paying floating indebtedness incurred in making permanent additions and improvements to its plant, and in making further additions and improvements, such notes to bear 5 per cent interest and to be sold at not less than 95 per cent of their par value.

[June 7, 1915.]

APPLICATION by the Manchester Traction Light & Power Company for authority to issue notes for permanent additions and improvements; approved.

Appearances: Edwin F. Jones for the petitioner.

By the Commission: The petitioner asks authority to issue $1,000,000 three-year notes, the proceeds to be used in paying floating indebtedness incurred in making permanent additions and improvements to its plant, and for making further additions and improvements.

The company's books show that it has outstanding $415,000 in short-term notes, and that it has expended on capital account an amount exceeding this sum by several thousand dollars. An examination of the books by expert accountants, aided by our electrical engineer in checking up various items, shows that this account has been very conservatively kept. Where there has been any doubt as to whether a particular item was properly chargeable to capital account or to maintenance, it has been charged to maintenance. And there has been no padding of the capital account by the addition of fanciful, theoretical, or estimated overhead charges. Engineering, superintendence, and the like have been charged to this account only as expense of that nature has been actually incurred upon some specific piece of work. In fact, it would appear that the capital account might easily have been made considerably larger than it ac-

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tually is. The company has been prosperous and has made a good profit on its business. And it has been its policy to maintain its properties at a high standard of efficiency out of earnings, rather than to take advantage of every possible opportunity to swell the volume of its outstanding capital.

This policy, if kept within reasonable limits, is highly to be commended. It, of course, reduces the showing of net earnings. But it inevitably results in better service. And the public is better satisfied to pay a fair price for good service than to receive an inferior service at slightly lower rates.

From the testimony before us, and from our examination of the petitioner's accounts, we find that the amount shown by the company's books has actually been expended for purposes such that it is properly capitalizable, and that that amount exceeds the sum of $415,000, the company's present floating indebtedness represented by notes outstanding.

The company also desires to make further expenditures in improving its plant. Under an arrangement with the city of Manchester it proposes to place underground its wires in the business center of the city. Work of this character is to be undertaken at once at an estimated expense of $60,000, to be followed in the near future by the further expenditure of about the same amount.

Its hydraulic plants have in recent years suffered several annoying interruptions of service, from anchor ice and other causes, and on such occasions its steam plant is inadequate to supply the deficiency. It is felt that to insure adequate and continuous service at all times it is necessary to construct a steam plant of 6,250 kilowatt capacity, and plans have been prepared for such a plant to be erected on land owned by the company at Kelley's Falls in West Manchester. The plans include a substation at Brook street, the site of the present steam plant, with a transmission line from Kelley's Falls to the substation.

The power developed at Garvin's Falls on the Merrimack is now transmitted to Manchester at a comparatively low voltage, with consequent loss in transmission, on lines erected in the public highways. It is proposed to build a new transmission line from Garvin's Falls, capable of carrying a much higher voltage, and to be constructed on a private right of way.

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It is also proposed to improve the development of the water power at Kelley's Falls.

The estimated cost of the proposed improvements is $750,000, making a total capitalizable expenditure already made, or in contemplation, considerably exceeding $1,000,000, the amount of the note issue for which authorization is requested.

The proposed improvements will result in no increase in earnings. There will be some economies in reduced labor costs, saving in coal expense, and diminished loss of current in transmission. But these economies would not in themselves justify the contemplated expenditures, as a commercial proposition. The purpose and justification of the investment is the assurance to the cities of Manchester and Nashua, and the other communities served by the traction company, of adequate and uninterrupted service.

The increase in capital will of course absorb some of the surplus earnings of the company. But from the point of view of the public there can be no objection to this. The public will get the benefit of the improvements in a better and more reliable service than it now receives.

It is found that the purpose for which it is proposed to issue notes is a lawful purpose, and that the amount of notes proposed to be issued is reasonably requisite for that purpose.

The rate of interest upon the notes was not determined at the time of the hearing, but has since been fixed at 5 per cent. It is obvious that the rule allowing bonds to be sold at not less than 90 per cent of their face value has no applicability to an issue of notes for so short a period as three years. Such a discount would make the cost of the money to the company so great as to be clearly inconsistent with the public good.

In view of present market conditions, a price not less than 95 per cent of par would seem to be reasonable.

An order will accordingly issue approving the sale of the company's three year 5 per cent notes to the amount of $1,000,000, to be sold at not less than 95 per cent of their par value.

Edward C. Niles, for the Commission. Benton and Worthen, Commissioners, concurred.

Note.—Security issues have also been authorized in the following cases:

District of Columbia In Re Washington R. & Electric Co. No. P.U.R.1915E.

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1346–3, March 23, 1915, $353,000 general improvement 6 per cent debenture bonds, the proceeds to be used for construction and equipment purposes; In Re Potomac Electric Power Co. No. 1392–1, April 14, 1915, $79,500 general improvement 6 per cent debenture bonds, the proceeds to be used for additions and betterments; In Re Washington & M. R. Co. No. 254–33, June 30, 1915, $66,200 first mortgage 5 per cent bonds on condition that the outstanding capital stock of the company be reduced to $10,360, the proceeds to be used for indebtedness incurred for construction of road and the cost of certain extensions, betterments, and improvements, and to provide working capital, discounts, commissions, and expenses to be amortized out of income prior to September 31, 1945.

Maryland. In Re Suburban Water Co. Order No. 2399, July 1, 1915, $20,000 first mortgage 6 per cent bonds to be either hypothecated to secure payment of loans, or to be sold at not less than 90 per cent of their face value, the proceeds to be applied "(a) to the acquisition of property, the construction, completion, extension, and improvement of its facilities, $7,173; (b) to capitalize earnings of the company expended prior to April 1, 1914, in the acquisition of property, the construction, completion, extension, maintenance, and improvement of its facilities, $10,473, this amount to be held in the treasury of the company, subject to the future order of this Commission in the premises;" In Re Hyattsville Gas & Electric Co. Case No. 915, Order No. 2450, July 28, 1915, mortgage bonds to an amount not exceeding $87,000, the proceeds of which were to be devoted to the payment of outstanding bills, to the reimbursement of the stockholders of the company, or earnings used for capital purposes, and a small balance to go into the treasury of the company to be expended for capital purposes.

Missouri. In Re Hamilton Teleph. Co. No. 588, January 18, 1915, $400 capital stock to be issued at par, the proceeds to be used for the discharge and obligations incurred for capital purposes.

Nebraska. In Re Jansen Light & P. Co. No. 2325, April 28, 1915, $5,500 common stock, the proceeds to be used for construction purposes, the company being authorized to set aside not less than 8 per cent upon the amount of stock authorized to be issued as a maintenance and depreciation fund; In Re South Side Irrig. Co. Application No. 2401, May 7, 1915, $15,000 stock, the proceeds to be used for capital purposes; In Re Platte Valley Teleph. Co. No. 2291 May 26, 1915, $54,900 capital stock, proceeds to be used for the purpose of discharging outstanding legal indebtedness for the payment of costs of additions and betterments; In Re Chicago, St. P. M. & O. R. Co. Nos. 2444 and 2445, June 29, 1915, $400,000 consolidated 6 per cent mortgage bonds to be sold at not less than 75 per cent of their par value, the proceeds to be used to discharge and retire the bonds of the Sault Ste Marie & Southwestern Railway Company, and to satisfy the mortgage securing them; $2,000,000 of

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debenture 5 per cent gold bonds of 1930 to be sold at not less than 75 per cent of their par value, the proceeds to be used for construction purposes.

New Hampshire. In Re Wakefield Teleph. Co. No. 429, April 12, 1915, $600 capital stock for the discharge of note of the same amount; In Re Hampton Waterworks Co. No. 449, July 9, 1915, $2,000 bonds to be sold at not less than 90 per cent of their par value, the proceeds to be used in paying for engineering supervision of the construction of extensions to its plant; In Re Hampton Waterworks Co. No. 451, July 12, 1915, $8,000 bonds to be sold at not less than 90 per cent of their par value, the proceeds to be used for defraying indebtedness incurred for improvements and extensions to reimburse the treasury for moneys expended for the same purpose, and any balance to be expended for making further permanent improvements and extensions; In Re Union Teleph. Co. No. 454, July 27, 1915, $1,000 capital stock, proceeds to be used for paying outstanding obligations incurred in making extensions and permanent improvements; In Re Hampton Waterworks, No. 455, July 30, 1915, 50 shares 6 per cent cumulative preferred stock of the par value of $100 each to be disposed of at not less than par, and 5 bonds of the par value of $1,000 each, said stock and bonds to be issued in place of 10 bonds previously authorized, the proceeds for the purposes and accounted for in the manner specified in order Nos. 449 and 451; In Re Glen Teleph. Co. No. 456, August 3, 1915, $150 capital stock, proceeds to be used for installing telephone plant.

WISCONSIN RAILROAD COMMISSION.

V. B. MATHEWS et al.

v.

VIOLA LIGHT & POWER COMPANY.

Evidence — Sufficiency — Cost of construction.

1. The cost of constructing a plant cannot be established by the debits to an account in a bank through which all construction expenditures were checked, where the account was not used for construction purposes only and the checks do not disclose what the payments were for.

Return — Reasonableness — Amortization of losses — Cost of acquiring meters.

2. An electric light and power company was ordered to reduce its rates by putting into effect a new schedule which would produce a return of 7 or 8 per cent on the investment, although it was possible to order a still lower rate were it not for the fact that it was necessary

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for the company to amortize some of its early losses and to acquire meters owned by consumers.

[August 2, 1915.]

COMPLAINT that the rates of the Viola Light & Power Company are exorbitant and asking that the Commission make an investigation and establish reasonable rates; upheld and company ordered to put into effect a new schedule of reduced rates.

The appearances are set out in the opinion.

By the **Commission:** A complaint signed by twenty-five residents of Viola was filed on March 12, 1914, alleging that the rates of the Viola Light & Power Company are exorbitant, and asking that the Railroad Commission make an investigation and establish reasonable rates.

Pursuant to notice, a hearing was held at the office of the Commission on April 17, 1914. V. B. Mathews and J. W. Moon appeared for the petitioners, and C. R. Thompson for the respondent.

The company supplies electric energy to the village of Viola and to its inhabitants from a hydroelectric plant of about 175 h. p. capacity located at the edge of the village on the Kickapoo river. The population of the village is about 700. The records of the company disclose that on March 1, 1915, there were 151 customers receiving service, or, in other words, there were 21.6 customers for each 100 persons. This remarkable development of business speaks well for the economic well-being and prosperity of the village.

It seems that the construction of this plant was completed in November, 1911, at which time the company began to sell electricity. Apparently, however, the designers of the dam had not reckoned on the Kickapoo, though the president of the company insists that he has later learned to know the stream much to his sorrow. According to the president, the stream is "able to raise about 8 to 10 feet in three or four hours, and comes down the valley with all the vengeance that the Indians ever did." Whether the stream is actuated by any motive or not we will leave to those who can commune with nature, but the cold fact remains that the president of the company awoke one morning after a night of hard rain, and found that his dam had moved

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down the river about a hundred feet. And this happened only two weeks after the plant had been put in operation. Immediately after the high water had subsided, the testimony of the president shows the company erected a cofferdam and began supplying service again. But this cofferdam was maintained "by the constant and everlasting work of all the way from three to twenty men at various periods," until finally at the end of two years, that is, in December, 1913, a second concrete dam was completed, which is still holding the river in check, or at least it was at the last report. The testimony, however, dose not disclose just why so long a time was permitted to elapse before the second dam was built.

[1] This case presents several interesting and unusual features. The president of the company testified that the engineer who designed the original structure estimated that the dam, station, and distribution system could be built complete for $9,000. Strange as it may seem the total cost up to the time when the first dam went out was only $7,600. In other words, the engineer's estimate in this instance was 12 per cent more than the actual cost. The president further testified that $21,000 had been expended on this property, for which nothing remained, the total cost being $28,763.49. To substantiate this, the debits to an account in one of the Viola banks through which all the construction expenditures were checked, were offered as evidence. These debits amounted to $27,163.49 in addition to which the president said he had spent $1,600. While the vouchers which had passed through the bank were offered for examination, such an examination was useless because the vouchers did not disclose what the payments were for, nor can we be certain that the account before mentioned was used only for construction purposes. The evidence with respect to this account is far from complete, though it checks quite closely with an earlier statement that the physical property in existence at the present time amounts to only $7,800, and that $21,000 had been expended of which now there is no evidence, part of it having been swept down the river and a still larger part having been expended in maintaining a cofferdam during the interim between

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the destruction of the first dam and the completion of the second one.

The representative of the village testified that this property had been assessed at $7,000, but that since the new dam had been built the investment probably would be $12,000 to $14,000. The property and plant account as exhibited in the balance sheet of the company's report for the year ending June 30, 1914, shows a total of $16,500. No audit, however, has been made of the books of the company, nor has an inventory of the physical property been made, as it is believed that substantial justice can be done to both parties in this case without going to that expense.

Considerable time at the hearing was devoted to the question of the quality of the service furnished by the company. Several inspections have been made of the lighting service furnished at Viola. These indicate some improvement from year to year, but the last inspection, made March 2, and 3, 1915, shows that in some respects the service at that time was not as yet up to standard. Two voltage records were taken, one at the Commercial Hotel, showing a variation from 117 to 127½ during the lighting hours. The other record was taken at the Webb Hardware Store, and showed a variation between 107 and 122 during the lighting hours. The standard is 112, consequently the variation at both these points was excessive. The variation at the Webb Hardware Store was particularly serious, being more than double the variation permitted under the rules of service. These variations were due to the unbalancing of the system, which we understand has now been corrected.

Complaint also was made at the hearing that the quality of the meters was poor, and that the meters needed testing. The last inspection shows that most of the meters were overdue for periodic tests, and it further appears that meters which had been tested were not adjusted within 1 per cent of correct registration, as required by the Commission's order establishing standards. A representative of the company when recently interviewed expressed a willingness to comply with the Commission's rules, but we have not as yet been notified that all the violations have been corrected. As to the quality of the meters, we find that

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meters such as those in Viola are in quite general use, but that they, like all other meters, must be tested periodically and readjusted when found incorrect.

[2] The rates on file with the Commission are as follows: 15 cents per kw. hr. If the bill is paid on or before the 15th of the month the rate is 13½ cents per kw. hr. for the first 20 kw. hrs., 12 cents per kw. hr. for the next 30 kw. hrs., and 10 cents per kw. hr. for all over 50 kw. hrs. consumed per month.

In our investigation, however, we found that a minimum bill of 75 cents per month was charged lighting customers. We also found the following power rate in force.

First 100 kw. hrs.	.....	6 cts. per kw. hr
Next 200 " "	.....	5 " " " "
" 200 " "	.....	3 " " " "
All over 500 " "	.....	2 " " " "

The company has a contract with the village for street lighting which provides for 53–60 candle power series, type C, 6.6 ampere, incandescent lamps burning on a moonlight schedule from dusk until midnight and 5 A. M. to daylight, at a rate of $24 per lamp per year. This contract, however, never has been filed with the Commission as provided by the statute.

In order to fix a reasonable rate it is necessary to ascertain the normal operating expenses of the plant. The two annual reports of the company to the Commission furnish no index, as the operating expenses seem to be abnormally high when compared with the expenses of other plants similarily situated. After going over the situation quite carefully, it seems that an allowance about as follows would be sufficient.

Labor including management	$1,800
Materials and supplies	250
Taxes	213
Depreciation	250
Total	$2,513

The amount allowed for labor may seem small, but one of the two men whose salaries this item covers will be able to give a good deal of his time to such things as house wiring; consequently only a portion of his salary would be included here.

An analysis of the consumer records of the company shows that

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about fifty new customers were added during the last year. The analysis also shows that 23.234 kw. hrs. were used by the lighting customers, and that of this consumption 15,052 kw. hrs. fell under the first step of the rate, 4,679 kw. hrs. under the second, and 3,503 kw. hrs. under the third. The revenue from the minimum bill was $31.50 and from flat rates $30. When all the new customers are placed on a full year basis, it is found that the probable revenue from commercial lighting, based on the rates set forth in the order at the end of this opinion, will amount to about $3,000 per year.

The minimum amount of revenue that probably will be received from commercial power including village pumping at the rates prescribed in the order will be about $850. If the street lighting rates are placed at $20 per year, the revenue from this source will be $1,060. Without taking to consideration the non-operating activities of the company, the probable net revenues from the rates established by this decision will be about as shown in the following summary:

Probable Revenues and Expenses.

	Revenues.	Expenses.
Revenues:		
Commercial lighting	$3,000.00	
Commercial power	850.00	
Street lighting	1,060.00	
Total revenues	4,910.00	
Expenses:		
Labor inc. management		$1,800.00
Materials and supplies		250.00
Taxes		213.00
Depreciation		250.00
Total expenses		2,513.00
Available for interest and profits	2,397.00	

From the foregoing it will be seen that the probable net operating revenue will amount to about $2,397, which we find is equal to a return of 7 per cent on $34,243, or of 8 per cent on $29,962. From this it would appear that a still lower rate might be possible. Under the circumstances of the case, however, we do not feel that a greater reduction should be made at this time in view of the necessity of amortizing some of the early losses which the plant suffered.

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Another reason for not reducing the rates still more is that the policy of the company of requiring customers to furnish meters will have to be changed to accord with the provisions of the public utility law which provides that the utility must own all of the equipment. This matter has been taken up with the company, and the understanding we have is that the company will hereafter furnish meters to customers, and will proceed to acquire by purchase the meters now owned by its consumers.

It is therefore *ordered* that the Viola Light & Power Company shall substitute the following rate schedule for the one it now has in force:

Commercial Lighting.

Minimum bill 75 cts. per month.
Energy:
13 cts. gross or 12 cts. net per kw. hr. for the first 20 kw. hrs. consumed per month.
10 cts. gross or 9 cts. net per kw. hr. for the next 30 kw. hrs. consumed per month.
7 cts. gross or 6 cts. net per kw. hr. for all over 50 kw. hrs. consumed per month.

Commercial Power.

Minimum bill 75 cts. per month for the first h.p. or fraction thereof, and 50 cts. per month for each additional h.p.
Energy:

7	cts.	gross	or	6	cts.	net	first	100	kw.	hrs.	per month.
6	"	"	"	5	"	"	next	200	"	"	"	"
4	"	"	"	3	"	"	"	200	"	"	"	"
3	"	"	"	2	"	all	over	500	"	"	"	"

Discount.

The company shall bill all consumers at the gross rate, and the difference between the gross and the net rate or 1 cent per kw. hr., shall constitute a discount for payment on or before the 15th of the month.

Street Lighting.—The rates for street lighting shall be as follows: 60 C. P., series, 6.6 ampere, type C incandescent lamps burning on a moonlight schedule from dusk to midnight and from 5 A. M. to daylight, $20 per lamp per year.

It is further *ordered* that the Viola Light & Power Company shall acquire the meters now owned by the consumers of the company.

Railroad Commission of Wisconsin, by Halford Erickson, Carl D. Jackson, Commissioners.

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WISCONSIN RAILROAD COMMISSION.

IN RE PROSPECT, GUTHRIE, & BIG BEND TELEPHONE COMPANY.

Rates — Telephone — Increase — Number of subscribers on line.

A telephone company was authorized to make a slight increase in its single rate for all classes of service, by charging more for the higher class of service furnished on one and two party lines than on multiparty rural lines, although the difference in cost of furnishing the various classes of service was not large, it appearing that the revenue under the old rate was slightly less than the full amount required, that the operating expenses were normal and the investment conservative.

[August 2, 1915.]

APPLICATION for authority to increase a single rate for all classes of telephone service from $12 per year to $15 per year. The Commission found that some increase in rates was justified, but that the application could not be granted in whole, and authorized the company to put into effect a schedule of rates varying from $13 per year for multiparty rural lines to $15 per year for higher classes of service, depending upon whether the lines were one or two party or business or residence.

By the Commission: This is an application under date of April 22, 1915, filed with the Commission on May 1, 1915, by the Prospect, Guthrie, & Big Bend Telephone Company for authority to increase rates. Applicant is a telephone utility with its principal place of business in Big Bend, Waukesha county, and engaged in the management and operation of a telephone system in that vicinity.

The lawful rates of the applicant as set forth in the application are $1 per month or $12 per year if payment is made in advance, and $13 per year if payment is not made in advance. There is another line charge of 10 cents. Applicant states that the revenues have not been sufficient to meet the necessary expenses in connection with the business and pay a fair rate of interest on the investment. Authority is therefore asked to increase the rate for exchange service from $12 per year to $15 per year, payable in advance, and to retain the 10 cent other line charge.

Hearing in this matter was set for Madison, Wisconsin, June

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11, 1915, but no appearances were entered. The report of the Prospect, Guthrie, & Big Bend Telephone Company for the eighteen-month period ending December 31, 1914, shows that there were at the end of that period 329 subscribers receiving telephone service, all of which subscribers were on rural lines with the number of parties on a line properly limited, with possibly one or two exceptions. The report further shows that of the 38 rural lines, 34 were metallic and 4 grounded. The system also contains two metallic toll lines.

Revenues for the eighteen months under consideration appear to have been reported with substantial accuracy, the total amount being $7,008.25 made up of exchange telephone earnings of $5,-882.55 and earnings from connecting lines of $1,125.70.

Operating expenses, however, appear to be incorrectly reported, probably because of a misunderstanding as to the requirements of the Commission's Classification of Accounts. However, the errors in reporting operating expenses seem to be errors in classification rather than in the amount of expenses reported for all purposes.

In order to have the most accurate data possible, the Commission had an examination of the books of the company made by a member of its accounting staff for the calender year 1914. The lack of detailed evidence supporting certain accounting entries makes it practically impossible to determine the exact dividing line between the company's expenditures for current operation and maintenance and its expenditures for other purposes. The same holds true to some extent regarding the division of expenses among the various departments of the business in accordance with the primary operating expense accounts of the Commission's classification. However, we believe that the results obtained by the Commission's accountant are sufficiently accurate for the purposes of this case; and it should be noted that when consideration is given to the fact that the company's report covers a period of eighteen months instead of the last calender year only, the total revenues and total expenses reported by the company check rather closely with the amounts obtained by the Commission's auditor. According to the auditor's report the revenues and expenses for the calender year 1914 were as follows:

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Operating Revenues.		
Exchange telephone earnings	$4,026.94	
Earnings from connecting lines	798.45	
Total revenues		$4,825.39
Operating Expenses.		
Central office	$1,138.62	
Wire plant	864.82	
Substation	412.06	
Commercial	121.73	
General	135.73	
Undistributed	52.89	
Taxes	121.63	
Total of above expenses		$2,847.48
Available for interest and depreciation		$1,977.91

According to the 1913 report there were on June 30, 1913, a total of 337 subscribers, or 8 more than the reported number on December 31, 1914. Assuming that the number of phones reported for December 31, 1914, is the average number of phones in use during the calender year, which seems to be a reasonable assumption in view of the number reported as of June 30, 1913, the operating expenses per telephone as shown by the auditor's report were about $8.30 exclusive of taxes, interest, and depreciation. For metallic service on a system with well-constructed lines and proper limitations of the number of subscribers, the operating expenses do not appear to be at all abnormal. The investment as of December 31, 1914, as shown by the company's report, amounted to $13,353.92, or a little less than $41 per subscriber, which seems to be a very conservative investment for the character of the business. In fact it is very doubtful whether the physical valuation would show that the property could be reproduced for anything near the amount reported as invested.

If we are to be guided entirely by the reported investment, it would appear that during the past calendar year, the company has been making just about a fair return upon its investment after making full provision for depreciation. Although the rate of $12 per year appears to be unusually low for rural service on metallic lines, the revenues of the company have not been very much less than the full amount required. This has been due in part to the earnings from connecting lines, which have been large enough to partly make up for the low rate on rural lines for exchange service. The company has no other rate for single party or two-party lines than it has for its multiparty rural lines, nor has it expressed

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any desire that such a difference in rates should be established. We think that some difference should be made in the schedule to take into consideration the higher class of service furnished on one and two party lines, although the difference in cost of furnishing the service to the various classes of subscribers may not be very large in the present case.

In view of all the facts which we have been able to gather in this case, it seems that the application of the company cannot be granted in whole. However, some increase in rates is justifiable and will be provided for.

It is therefore *ordered* that the applicant, the Prospect, Guthrie, & Big Bend Telephone Company, be and the same hereby is authorized to discontinue its present schedule of telephone rates for exchange service, and to substitute therefor the following schedule: Rural line telephone, $13 per year; two-party residence telephones—village, $13 per year; one-party residence—village, $14 per year; two-party business telephones—village, $14 per year; one-party business telephones—village, $15 per year.

Telephone bills shall be payable quarterly, and if paid during the quarter in which the service paid for is being rendered, bills shall be net—if not paid during the quarter in which the service is rendered a penalty of 25 cents per quarter shall be applied on all such delinquent bills without discrimination. Other line charges shall remain as at present.

Rates as authorized in this decision may be placed in effect October 1, 1915, for the quarter beginning on that date.

Railroad Commission of Wisconsin, by Halford Erickson, Carl D. Jackson, Walter Alexander, Commissioners.

MASSACHUSETTS PUBLIC SERVICE COMMISSION.

IN RE BLUE HILL STREET RAILWAY COMPANY.

[P. S. C. 886.]

Evidence — Presumptions — Approval of security issues by Commission.

1. The approval by the Massachusetts Commission, of stocks and bonds issued by a street railway company under statutes making it

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necessary for the Commission to find that the issues were reasonably necessary for lawful corporate purposes before it could give its approval, was regarded as conclusive evidence, so far as the Commission was concerned in fixing rates of fare, that the securities represented legitimate investment, not excessive for the purpose, and as strong presumptive evidence that the investment was "prudently" made within the meaning of the rule that capital honestly and prudently invested must be taken as the controlling factor in fixing the basis for computing rates.

Rates — Factors — Floating indebtedness incurred without regulation.

2. The existence of a large floating indebtedness incurred without regulation by a street railway company, applying for authority to increase its fares, makes it essential to scrutinize its capital expenditures with great care, even though all outstanding stocks and bonds were issued under public supervision.

Rates — Street railroads — Comparison between investments per mile.

3. In determining the amount of capital to be considered as a basis for computing rates, comparison was made between the book value per mile of track of a street railroad company and other companies operating in the state, with due allowance for widely different conditions affecting construction and equipment.

Rates — Street railroads — Construction by contractor upon percentage basis.

4. The fact that a street railroad was constructed by a contractor upon a percentage basis was considered as a reason for the close scrutiny of reported costs in ascertaining the amount of capital to be taken as a basis in computing rates.

Evidence — Presumption — Absence of record of cost of construction.

5. Doubts as to the cost of constructing a street railroad arising from the absence of records of the cost which the company ought to keep and preserve, the vouchers having been destroyed by fire, must be resolved against the company in investigating its capital expenditures for rate-making purposes.

Accounting — Substitution of property destroyed and sold — Adjustment of book value.

6. Upon the destruction by fire of a street car barn and rolling stock, and a sale of the remaining cars, the accounts of the company should be adjusted by writing the property off on the books, charging "cash" with the amounts received from the insurance, salvage, and sale, and charging "profit and loss" with the remainder of the value; and crediting "cash" as the amount received is expended, charging all additions and improvements to the property accounts affected, and the balance, representing reconstruction, to a suspense account to be gradually liquidated from earnings; and the failure to make the adjustment is not excused by the fact that the effect of the fire and substitution of property is a benefit rather than an injury.

Rates — Street railroads — Comparisons.

7. In ascertaining the amount of capital expenditures of a street railway company to be taken for rate-making purposes, comparison was

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made between the amount of bonds, approved by the Commission for less than the amount petitioned for, plus the capital stock authorized and issued and the permanent investment of the company, as shown by its balance sheet, filed in petitioning for authority to issue the bonds, and the estimated cost of the property made by an agent of the Commission, who made no allowance for overhead charges; and also between an estimate of cost with an allowance for overhead charges, made by an engineer of the Commission at the time of the application for the rate increase and the permanent investments, as shown by the balance sheet at that time, and the prior estimate of cost made when petitioning for the bond issue.

Depreciation — Street railroad — Allowance of percentage of operating revenue.

8. The Massachusetts Commission, in estimating the amount of revenue necessary for a street railroad company, did not apply the rule that 20 per cent of operating revenue is the proper proportion necessary to cover maintenance of way, structures, and equipment and depreciation with average conditions, but allowed a greater percentage where the road was small with relatively low gross earnings and the accrued depreciation was relatively large.

Valuation — Capital invested — Discount on bonds.

9. The amount of the discount on bonds sold by a public service corporation cannot be considered as part of the capital investment which is to be taken as a basis for fixing rates.

Return — Capital honestly and prudently invested — Deduction for accrued depreciation.

10. In determining the revenue to which a street railroad is entitled, allowance was made for an amount equal to a fair return upon the capital honestly and prudently invested, without deducting the accrued depreciation, where failure to make due provision for depreciation was not attributable to mismanagement and no dividends had been paid.

Depreciation — Street railroads — Loss from destruction by fire and sale.

11. A loss from the destruction of a street car barn and rolling stock by fire and the voluntary sale of cars, over and above the accrued depreciation, should be deducted in determining the basis of a fair return.

Return — Street railroad — Failure to invest money received from insurance, salvage and sale — Reconstruction of roadbed and track.

12. An amount received from insurance and salvage of a street car barn and rolling stock, and from a sale of the remainder of the cars, that is not reinvested in permanent property, but is used in reconstructing roadbed and track, is an expense properly chargeable against operation, and cannot be regarded as part of the capital invested in determining the basis of a fair return.

Return — Street railroad — Discontinued branch line.

13. Although a return upon the investment in an extension of a street railroad may not be denied on the ground that it was built contrary to the dictates of reasonable prudence and sound business judgment, except

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in a clear case, no allowance was made for the investment in a branch line which had been discontinued and was of no economic value to the state or the company.

Return — Street railroads — Amount.

14. A street railroad company was authorized to increase its fares, where net earnings over and above proper operating expenses and fixed charges, without making any allowance for depreciation or for necessary charges to profit and loss, only produced in a series of years an average approximate return of 4 per cent upon the stock, the company not having been mismanaged and no dividends in fact having been paid.

Return — Failure to reinvest money received from insurance, salvage, and sale — Reconstruction — Operating deficit.

15. A street car company was held entitled to have an amount received from insurance and salvage of a street car barn and rolling stock, and from a sale of the remainder of the cars, that was not reinvested in permanent property but was used in reconstruction work, liquidated from earnings, and to receive interest from it to the extent it remains unliquidated, and to treat it as an operating deficit, where the reconstruction was necessary, even though the amount could not be regarded as part of the capital invested in determining the basis of a fair return.

Return — Amortization of bond discount — Floating indebtedness.

16. A public service corporation was held entitled to have the amount of discount on the sale of bonds amortized from earnings during their life, and to receive interest upon floating indebtedness incurred to supply the deficiency in capital caused by the discount, until the impairment is made good from earnings, although the amount could not be considered as part of the capital invested in determining the basis of a fair return.

Discrimination — Rates — Street railroads — Short-haul.

17. A proposed increase of street car fares which will not result in excessive or unreasonable profits to the company will not be approved if the fares unjustly discriminate against short-haul passengers.

Discrimination — Rates — Street railroads — Flat fare — Short-haul.

18. A flat street car fare for a ride of any distance in a particular zone does not unjustly discriminate against short-haul passengers so long as the unit of fare is not unduly high.

Discrimination — Rates — Street railroads — Fare zones — Short-haul.

19. A street railway company was authorized to obtain additional revenue by making an additional fare zone and reducing the unit fare from 6 to 5 cents in the shorter zones, rather than to increase the unit from 6 to 8 cents without making any change in the zones, on the theory that an increase in traffic would result from the new schedule, and objection that the 8 cent unit would be so high as to unjustly discriminate against short-haul passengers in a zone would be obviated.

[July 31, 1915.]

NOTICE of Blue Hill Street Railway Company relative to in-

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crease in rates of fare. Authority to increase unit fare from 6 to 8 cents, denied; authority to provide an additional fare zone and to reduce fare from 6 to 5 cents in certain zones and to sell books of special tickets, granted.

Appearances: A. Stuart Pratt for Blue Hill Street Railway Company; James E. Riley, George W. Pratt, Cornelius Healy, Jr., for selectmen of Stoughton; James S. Russell for selectmen of Milton; Joseph J. Murphy, Esq., for residents of Canton.

By the Commission: On March 9, 1915, the Blue Hill Street Railway Company filed with this Commission, in compliance with § 20 of chapter 784 of the acts of 1913, notice of a proposed increase in passenger fares to take effect on April 15, 1915. As stated in this notice, the company proposes to make the cash fare 8 cents for every ride within the limits of any fare zone; to sell tickets, each ticket the equivalent of one cash fare, at the rate of 7 tickets for 50 cents; and to sell special school tickets, at the rate of 10 tickets for 40 cents, to pupils entitled by law to half-fare transportation. The present unit fare is 6 cents, and no tickets are sold other than school tickets, which are now sold 10 for 25 cents. The proposed increase, if allowed and if the company's estimates are correct, will produce from $8,000 to $12,000 additional revenue annually. The total operating revenues for the year ended June 30, 1914, were $95,224.38.

On March 19, 1915, the Commission suspended the operation of the new schedule until May 15, 1915, and later the time of suspension was extended to August 1, 1915. A public hearing was given on April 14, 1915, at which the company presented its case, and remonstrances were offered by selectmen and other citizens of towns affected.

A petition signed by one hundred and thirty-seven residents of the town of Canton was filed, praying the Commission, if it should deem it advisable to allow an increase, to order the company "to sell a workingman's ticket at the rate of 5 cents, good only on working days, between the hours of 6 to 8 A. M. and from 4 to 6 P. M."

History of the Company.

The Blue Hill Street Railway Company was organized under the General Laws on July 21, 1899. The main line runs from

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Mattapan square, in the outskirts of the city of Boston, through the towns of Milton and Canton to Stoughton square in the town of Stoughton, with a short branch from a point on the main line near Canton station to the boundary between the towns of Canton and Norwood, and a still shorter branch from a point in Blue Hill avenue, Milton, to Readville square in that part of the city of Boston which was formerly the town of Hyde Park. The total mileage, computed as single track and including trackage rights of .22 of a mile over the lines of the Bay State Street Railway Company, is about 19¾ miles. The tracks are laid very largely in the public streets, only 1.32 miles being on private right of way.

At Mattapan square there is a connection with the surface system of the Boston Elevated Railway Company, and at one time, under an arrangement with that company, Blue Hill cars were carried through to Dudley street station on the Boston rapid transit lines; but such operation was discontinued some years ago. At other points there are connections with lines of the Bay State, Bristol & Norfolk, and Norwood, Canton, & Sharon street railway companies. The road substantially parallels lines of the New York, New Haven, & Hartford Railroad Company. The following table shows the population in 1900, 1905, 1910, and 1915 of the three principal towns in which it operates, with the per cent of increase in each case from 1900 to 1915:

Town	1900	1905	1910	1915	Per Cent Increase
Milton	6,578	7,054	7,924	8,611	30.9
Canton	4,584	4,702	4,797	5,606	22.3
Stoughton	5,442	5,959	6,316	6,928	27.3
	16,604	17,715	19,037	21,145	27.4

Evidence in the records of the Commission shows that when the road was first built its ultimate extension to Providence was contemplated. It was regarded as the "first link" in such an interurban line.

A regular half-hour schedule, in general, is maintained on the main line, and an hourly schedule on the Norwood branch. The Readville branch has for some years been operated only "on pleasant Sundays," in the summer season, and at present cannot

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be operated at all, owing to the condition of the bridge over the Neponset river (record, p. 51). On Sundays and holidays in summer a service much more frequent than the normal is maintained on certain portions of the road to accommodate persons visiting the Blue Hill reservation, and the company is not always able to accommodate with its present equipment all of this class of traffic which presents itself (record, p. 43). The cars at present are of the single truck, hand-brake type, and capable of no more than a moderate speed. The road was originally equipped with cars of the double truck, air-brake type, but a fire in 1909 destroyed these and the present cars were substituted for purposes of economy. No attempt is made to carry on a freight and express business, but some slight revenue ($3,445.78 for the year 1914) has been obtained from the sale of power to the Norwood, Canton, & Sharon company.

The Blue Hill company commenced operation in Canton and Stoughton on November 3, 1899, and gradually extended its service through Milton to Mattapan square and to Readville, after purchasing the property and franchises of the Milton Street Railway Company, a newly organized road about to begin construction. This purchase was approved by the Board of Railroad Commissioners on August 6, 1903. Construction was substantially completed in 1904. The company was promoted and organized by Stone & Webster, who still own a majority of the stock, and the road was constructed by or under the direction of that firm and is managed under contract by the Stone & Webster Management Association.

At the present time there are, on the main line, three fare zones as follows:—

Mattapan square to Ponkapoag	5.41 miles
Blue Hill to East Sharon	6.25 "
Canton to Stoughton	4.22 "

These zones, however, overlap, the total distance from Mattapan to Stoughton being but 12.74 miles. The unit fare was originally 5 cents, but in 1908 it was increased to 6 cents. Residents of Stoughton and Canton protested against the change, so far as it affected travel between the two towns, but on April 14, 1908, the Board of Railroad Commissioners sustained the action

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of the company. To quote from its decision (40th Report, Railroad Commission, p. 115):—

"The Board, after consideration of the fare complained of, taken in connection with the fare limit and distance tables, is of opinion, in view of the financial condition of the company, that the existing rate for the distance traveled is not unreasonable, and therefore makes no recommendation to the company which would result in any modification of this fare or fare limit."

The Income Record.

The following table shows the results from the operation of the road, as shown by its annual returns, from the beginning of operation up to and including the year ended June 30, 1914:—

Blue Hill Street Railway.

Year.	Operating Revenue.	Operating Expense.	Net Operating Revenue.	Miscellaneous Income.	Gross Income Less Operating Expense.
1900	$14,535.93	$21,244.67	$6,708.74*	.....	$6,708.74*
1901	18,563.01	24,991.60	6,428.59*	.....	6,428.59*
1902	25,133.39	25,261.68	128.29*	.....	128.29*
1903	37,231.83	31,378.92	5,852.91	.....	5,852.91
1904	72,864.10	59,638.24	13,225.86	.....	13,225.86
1905	78,198.25	63,159.13	15,039.12	96.48	15,135.60
1906	86,344.03	61,599.63	24,744.40	.....	24,744.40
1907	84,666.24	66,828.94	17,837.30	561.24	18,398.54
1908	90,020.93	73,031.64	16,989.29	1,064.96	18,054.25
1909	80,117.33	55,591.65	24,525.68	376.46	24,902.14
1910A	55,813.21	38,767.29	17,045.92	172.25	17,218.17
1911	92,817.43	58,534.30	34,283.13	29.95	34,313.08
1912	95,006.32	59,702.26	35,304.06	125.81	35,429.87
1913	94,615.23	65,352.02	29,263.21	.....	29,263.21
1914	95,224.38	65,204.86	30,019.52	.....	30,019.52
	$1,021,151.61	$770,286.83	$250,864.78	$2,427.15	$253,291.93

A—Nine months. *—Deficit.

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Blue Hill Street Railway.

Year.	Deductions from Income.	Net Divisible Income.	Surplus or Deficit for Year.	Profit and Loss Adjustments.	Total Surplus.
1900	$1,261.67	$7,970.41*	$7,970.41*	.....	.....
1901	4,856.57	11,285.16*	11,285.16*	$2,196.00 B	$21,451.57*
1902	7,265.16	7,393.45*	7,393.45*	1,040.18 B	29,885.30*
1903	5,768.24	84.67	84.67	7,056.48	22,744.05*
1904	19,584.64	6,358.78*	6,358.78*	.....	29,102.83*
1905	21,205.94	6,070.34*	6,070.34*	.....	35,173.17*
1906	23,665.52	1,078.88	1,078.88	4,426.00 B	38,520.29*
1907	25,438.86	7,040.32*	7,040.32*	10,061.46 B	55,622.07*
1908	26,824.12	8,769.87*	8,769.87*	5,337.71 B	69,729.65*
1909	24,672.25	29.89	29.89	.....	69,699.76*
1910A	13,678.43	1,460.26*	1,460.26*	.....	71,160.02*
1911	25,545.50	8,767.58	8,767.58	.....	62,392.44*
1912	23,396.60	12,033.27	12,033.27	4,516.40 B	54,875.57*
1913	24,255.45	5,007.76	5,007.76	.....	49,867.81*
1914	25,079.02	4,940.50	4,940.50	.....	44,927.31*
	$277,697.97	$24,406.04*	$24,406.04*	$20,521.27 B	

A—Nine months. *—Deficit. B—Debits to Profit and Loss.

This record shows that the stockholders have never been paid a dollar in dividends, that revenues have often been insufficient to meet the fixed charges, and that they have at times been insufficient to pay operating expenses.

The returns for the year ending June 30, 1915, are not available, but information submitted by the company shows the following results from operation for the twelve months ending May 31, 1915, as compared with the similar period last year:—

	Current Year.	Previous Year.	Increase.	Decrease.
Gross Earnings	$93,126.00	$95,566.18	.....	$2,440.18
Operating Expenses	66,240.31	65,081.86	$1,188.45	.....
Balance	$26,885.69	$30,484.32	.....	$3,598.63
Taxes	3,041.68	2,810.24	231.44	.....
Net Earnings	$23,844.01	$27,674.08	.....	$3,830.07
Interest Charges	20,813.75	22,291.36	.....	1,477.61
Balance for Reserves and Dividends	$3,030.26	$5,362.72	.....	$2,352.46

These figures indicate that the financial showing has not improved during the year which has just closed, but, on the contrary, has been less favorable.

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A computation shows that the net divisible income, in the years where there has been any such thing, and without making any allowances for depreciation of other reserve appropriations, has had the following percentage relations to the outstanding capital stock:—

Year.	Per Cent.
1903	0.03
1906	0.35
1909	0.01
1911	2.92
1912	4.01
1913	1.67
1914	1.64
1915	1.01

The Investment Record.

In the Middlesex & Boston Rate Case, 2 Mass. P. S. C. R. pp. 105 et seq (1914) the Commission, after a thorough discussion of the principles involved, laid down the following rule:—

Accordingly, we rule that under Massachusetts law capital honestly and prudently invested must, under normal conditions, be taken as the controlling factor in fixing the basis for computing fair and reasonable rates; that if there is mismanagement causing loss, such loss must be charged against the stockholders legally responsible for the mismanagement; that reproduction cost, either with or without depreciation, while it may be considered, is not, under our law, to be taken as the determining basis for reckoning rates. (pp. 111, 112).

To what extent has capital been "honestly and prudently invested" in the Blue Hill Street Railway Company? The book assets and liabilities of the company on May 31, 1915, were as follows:—

Blue Hill Street Railway Company
Balance Sheet as of May 31, 1915.
Assets.

Cost of Railway:		
Road and track	$279,751.68	
Right of way and organization	52,576.84	
Electric line construction including transmission lines, conduits, etc.	63,480.77	
Interest accrued during construction	13,750.00	
Total Cost of Railway owned		$409,559.29

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Cost of Equipment:		
Cars and other rail equipment	$75,063.10	
Electric equipment of same	60,641.97	
Miscellaneous Equipment:		
Office furniture	829.28	
Shop, tools and machinery	521.08	
Barrett Jacks for cars	127.00	
Total Cost of Equipment owned		127,182.43
Cost of Land, Buildings, etc.:		
Land used in operation of railway	$1,900.00	
Power and sub-station buildings and equipment, dams, etc.	88,517.28	
Stations, waiting rooms and miscellaneous buildings	22,834.05	
Total Cost of Land, Buildings, etc. owned		113,251.33
Total Permanent Investments		$659,993.05
Cash and Current Assets:		
Cash	$5,095.85	
Bills and accounts receivable	731.56	
Prepaid accounts	2,906.76	
Total Cash and Current Assets		$8,734.17
Miscellaneous Assets:		
Material and supplies	$5,312.77	
Other assets and property: Suspense	30.24	
Total Miscellaneous Assets		5,343.01
Profit and Loss Balance—Deficit		43,202.49
Grand Total		$717,272.72

Blue Hill Street Railway Company.
Balance Sheet as of May 31, 1915.
Liabilities.

Capital Stock		$300,000.00
Funded Debt		250,000.00
Current Liabilities:		
Loans and Notes Payable	$158,500.00	
Accounts payable	2,101.84	
Salaries and wages	1,249.59	
Miscellaneous Current Liabilities:		
Outstanding tickets	224.86	
Employees' deposits	94.49	
Total Current Liabilities		162,170.78
Accrued Liabilities:		
Taxes accrued and not yet due	$1,589.45	
Interest on funded debt accrued and not yet due	2,083.34	
Miscellaneous interest accrued and not yet due	17.77	
Total Accrued Liabilities		3,690.56
Sinking and Other Reserve Funds:		
Accident Reserve	$1,411.38	
Total Sinking and Other Reserve Funds		1,411.38
Grand Total		$717,272.72

[1] The records show that all of the stock and all of the bonds

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were issued under the supervision and with the specific approval of the Board of Railroad Commissioners, as follows:—

$150,000	original stock—	Approved	on	December 18, 1900.
120,000	additional " —	"	"	August 5, 1903.
30,000	" " —	"	"	August 6, 1903, for the purchase of the property and franchises of the Milton Street Railway Company.
200,000	mortgage bonds—	"	"	November 30, 1903.
50,000	" " —	"	"	May 4, 1914.

$550,000 total stock and bonds approved.

The statutes under which these stocks and bonds were issued (Stat. 1894, chap. 462; Stat. 1902, chap. 370; Rev. Laws, chap. 109, § 24) made it necessary for the Board of Railroad Commissioners to find that the issues were "reasonably requisite" or "reasonably necessary" for lawful corporate purposes, before it could give its approval. In like manner, the statutes under which the property and franchises of the Milton Street Railway Company were purchased (Rev. Laws, chap. 112, § 86, and chap. 111, § 278) made it impossible for the purchase to take effect until its terms had been approved by the Board. The approval of these issues by the Board, coupled with its approval of the terms of the Milton purchase, must therefore be regarded as conclusive evidence, so far as the commonwealth and this Commission are concerned, that the stocks and bonds so issued represented legitimate investment, not excessive for the purpose, and as strong presumptive evidence that the investment was "prudently" made within the meaning of the rule laid down in the Middlesex & Boston Rate Case.

It does not follow necessarily that the company is fairly entitled to earnings which will enable it to pay dividends upon its stock, or, indeed, interest upon its bonds. The commonwealth has not guaranteed these securities, nor undertaken to protect stockholders or creditors against the consequences of mismanagement. If the company has wastefully or imprudently expended corporate funds obtained from other sources, or has in any other way been improperly managed, and if such mismanagement is the cause of a failure to earn dividends or interest, the company is the author of its own misfortunes, and the public cannot justly be taxed through the payment of higher fares to relieve its embarrassment.

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This must particularly be borne in mind in the consideration of floating indebtedness. Street railway companies under our laws (See Stat. 1906, chap. 463, pt. 3, § 107) are prohibited from issuing "stock and bonds, coupon notes, or other evidences of indebtedness payable at periods of more than twelve months after the date thereof" without the consent and approval of the Public Service Commission (formerly the Board of Railroad Commissioners). There is no such prohibition, however, in the case of evidence, of indebtedness payable at periods of twelve months or less after the date thereof. It was doubtless assumed, when the "antistock watering" laws were enacted, that the danger inherent in liabilities of this kind would in itself sufficiently limit the incurring of debt so evidenced; but such has not proved to be the case. "Notes payable" are usually a large and important item in the balance sheets of Massachusetts railroad and street railway companies, sometimes exceeding the funded debt in volume.

[2] It appears that the Blue Hill company on May 31, 1915, had "loans and notes payable" and "accounts payable" amounting in all to $160,601.84 (equal to 64.2 per cent of the outstanding funded debt), and that it paid out $8,313.75 in interest on such indebtedness during the year ended on that date. Incurred, as it is, at the will of the company and without public regulation, the existence of a large indebtedness of this nature, apart from other considerations, makes it essential in a case like this, where an increased tax upon the public is proposed, to scrutinize the capital expenditures with great care, even though all the outstanding bonds and stock have been issued under public supervision.

The Company's Capital Expenditures.

The following facts are pertinent in considering the capital expenditures of the Blue Hill Company:

[3] (1) A rough test is afforded by a comparison with the similar expenditures of other street railway companies in the commonwealth. A table has been prepared by the Commission's accounting department, and has been made a part of the record of the case, which shows the book value per mile of track (all track computed as single track) on June 30, 1914, of road, equipment, land, and buildings, and other property in the case of all

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operating companies with more than 10 miles of track. The totals are as follows:

Company.	Investment Per Mile.
East Taunton	$18,007
Warren, Brookfield, & Spencer	18,316
Interstate Consolidated	20,994
Milford, Attleboro, & Woonsocket	21,269
Norfolk & Bristol	21,627
New Bedford & Onset	21,666
Norton & Taunton	22,361
Northern Massachusetts	25,389
Ware & Brookfield	28,230
Connecticut Valley	28,445
Concord, Maynard, & Hudson	28,730
Massachusetts Northeastern	29,088
Milford & Uxbridge	30,516
Brockton & Plymouth	31,004
Northampton	32,054
Blue Hill	33,483
Lowell & Fitchburg	34,677
Holyoke	35,309
Providence & Fall River	35,685
Fitchburg & Leominster	38,318
Middlesex & Boston	38,534
Springfield	41,916
Worcester Consolidated	49,715
Bay State	50,699
Union	53,072
Taunton & Pawtucket	59,127
Boston & Worcester	61,832
Berkshire	87,126

These figures must be considered with due allowance for widely differing conditions. A company operating in a densely populated territory with heavy traffic needs many more cars per mile, and a relatively larger power supply, and more costly distribution system. Track construction in cities, with heavy girder rails, concrete foundation, and expensive paving, costs much more per mile than in the country districts. In the cities, also, it is often necessary to lay feed wires in costly underground conduits. Some companies purchase all or a part of their power, and have, therefore, a relatively low power investment. Widely varying expenditures for widening and regrading streets, etc., have been required by municipalities. Other similar differences in conditions might be mentioned.

So far as inferences may be drawn from the comparative figures, however, they are not wholly favorable to the Blue Hill Company. It operates entirely in country districts upon streets largely unpaved; the traffic which it handles requires comparatively little equipment and power supply in proportion to mile-

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age; there is nothing to indicate that its construction was of a higher grade than ordinary. Yet its cost figures are almost as high as those of the Holyoke system, which handles a city traffic, and distinctly higher than those of many of the other small country lines.

[4] (2) The road was constructed by Stone & Webster upon a percentage basis. It appears that the firm received 10 per cent on construction work in general, that the rate of the trestle over the New Haven railroad tracks at Stoughton was 7½ per cent, and that the rate on cars and electrical equipment was 5 per cent. No percentage was charged on organization expenses, interest during construction, or real estate.

The attitude of the Commission towards construction contracts of this nature was stated in the Hampden Railroad Case as follows (see 1 Mass. P. S. C. R. p. 210 [1913]):—

"It is true that the practice of selecting a favored contractor, usually upon the basis of allowing him a specific profit upon the actual cost of the work, is not uncommon upon other railroads and street railways, both in this state and in other parts of the country. An arrangement of this kind may be justified in the case of a rush job, or where there are special conditions which make it impracticable for a contractor to make an intelligent estimate in advance of what the work will be likely to cost. Except under such conditions, and there has been no claim that they existed in this particular case, the selection of a contractor without competition is apt to cause a suspicion of favoritism, and to promote wasteful methods of construction. The Commission is not disposed to view that practice with favor, either in this case or in any other that may hereafter come before us."

While it is entirely possible to carry on construction work economically under a percentage contract, the tendency is otherwise. The fact that in this case the work was done under such an arrangement is, therefore, an additional reason for close scrutiny of the reported costs.

[5] (3) Investigation of the capital expenditures of the road is hampered by the fact that the vouchers and voucher register covering the construction period were burned in the car barn fire of 1909. The detailed expenditures, it seems, were not elsewhere recorded. In default of this information, it is possible

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that conclusions may be reached which a more exact record of the facts would show to be unwarranted. Doubts, however, which arise from the absence of records which it ought to keep and preserve must, it would seem, be resolved against the company.

(4) There is evidence that the accounts of the company, and more particularly its public returns, in some respects have been inadequate and misleading. For example,

(a) The return for the year ending June 30, 1914, shows the following item among the assets: "Interest accrued during construction—$13,750." Investigation shows that this item, which has appeared in the returns since 1904, is not interest at all, but really "discount on bonds." Discount on bonds indicates a deficit of property, in comparison with liabilities, and should be amortized out of earnings during the life of the bonds; interest accrued during construction is a part of the necessary cost of the property and a proper subject of permanent capitalization. Returns which confuse the two things fail accurately to reflect the facts.

(b) It further appears that interest during construction actually amounted to $17,884.77, but this amount has been buried in sundry property accounts and has not been segregated under its proper caption.

(c) The prescribed forms for the annual returns have for many years provided a space for reporting, under "cost of railway," all "engineering and other expenses incident to construction." The Blue Hill company has never made an entry against this item. It has, however, reported expenditures, which it has classified as "right of way and organization expenses," amounting to $52,576.84, on June 30, 1914. This item, it seems, is made up as follows:—

Right of way	$27,956.22
Organization	24,620.62

The "right of way" payments were for land purchased for use in connection with the building of the roadbed or for land damages, including incidental legal expenses. The "organization" payments were for various legal and other services and expenses incidental to the organization of the Blue Hill and Milton companies and to the securing of the necessary locations.

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In a letter written by the company to the Board of Railroad Commissioners on November 11, 1903, on file in the records of this office, the statement was made, however, that one item entering into the cost of the road as it existed on that date was "Stone & Webster's charges . . . $39,086.75," and the following explanation was offered:—

"Stone & Webster have not rendered itemized accounts for this charge, nor can same be furnished at this time. A statement of the work and expenses included in this charge, covering a portion of the organization work, also engineering and purchasing materials required for construction and equipment, also general office expense, is set out in letter of Stone & Webster to the treasurer, dated November 6, 1903, a copy of which is attached hereto."

The attached letter describes in general terms and along the lines above indicated the work for which the charges were rendered. It is fairly clear that some of these charges should have been included with the "organization" expenses, and that the remainder were within the classification, "engineering and other expenses incident to construction." Yet they have never been so classified in the returns, but, instead, have been included with and buried in various items of property cost.

The Commission has been unable to ascertain whether any further payments, in addition to these charges, were made to Stone & Webster in connection with the construction of the road. Mr. Pratt, representing both the company and the firm, stated his belief that the charges were made up for the percentage payments under the construction contract, and were not in addition thereto (record, p. 105), but the loss of the original records makes it impossible to determine the fact.

[6] (d) On February 21, 1909, the car barn in Canton and its contents, including all the rolling stock except six of the passenger cars and certain work cars, were destroyed by fire. Subsequently these remaining cars, with the exception of two of the work cars, were sold. At the time of the fire the property burned stood on the books approximately at the following values:

Car barn	$ 19,887.94
Cars	103,218.95
	$123,106.89

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At the time of their sale, the remaining cars stood on the books approximately at a value of $31,734. The total book value of the property burned and sold was, therefore, $154,840.89. From insurance, salvage, and the sale the company received a total of $103,781.54, so that the net loss upon the book values was approximately $51,059.35. The amount recovered was expended as follows:

Expenditures:	
Right of way	$ 820.00
Track and roadway reconstruction	21,327.18
Electric line construction	1,915.94
Real estate used in operation of road	436.25
Buildings and fixtures	21,894.49
Power plant equipment	14.75
Shop tools and machinery	2,449.53
Cars:	
Electric equipment of cars	50,872.16
Miscellaneous equipment	3,220.53
Miscellaneous	340.06
Materials and supplies	490.67
Total	$103,781.54

Of these expenditures, the company admits that the item, "track and roadway reconstruction . . . $31,327.18," did not represent an addition or improvement to the property, but was rather in the nature of an expenditure for maintenance (record p. 113), such as would ordinarily be charged to earnings rather than to capital.

Under proper accounting methods, the property destroyed and sold should have been written off on the books, "cash" charged with the amounts received, and "profit and loss" charged with the balance. As the amount received was expended, "cash" should have been credited, all additions and improvements charged to the property accounts affected, and the balance (representing reconstruction) charged to a suspense account to be gradually liquidated from earnings. Instead, the accounts were allowed to stand without any change at all.

In justification of this procedure, the company contends, in substance, that the fire made it possible to substitute single truck for double truck cars; that the substituted cars, while cheaper, are better adapted to the needs of the road; that they are equally capable of handling the traffic and more economical in operation; that the reconstruction was necessary to adapt the track to the

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new type of cars, and would otherwise have been unnecessary at the time; and that the total effect of the fire and of the substitution has been a benefit rather than an injury. It can hardly be conceded that single truck cars serve the public as well as the double truck type, but even if the contention of the company in the main is correct, it furnishes no excuse for the failure to make a proper adjustment of accounts. Accounts of public service corporations must follow uniform and consistent principles, or they lose their value. The balance sheet of a Massachusetts street railway company, properly made up, should show the actual cost of its existing property, but in this case it shows the cost, not of existing property, but of property which has disappeared. The accounts, therefore, fail to reflect the facts and have been incorrectly kept. Whether the company should be allowed a return upon the original investment in car barn and rolling stock, or upon the new investment, is another question which we shall consider later.

[7] (5) In 1903, the company petitioned the Board of Railroad Commissioners for authority to issue $250,000 mortgage bonds, and, acting on this petition, the Board on November 30, 1903, approved an issue of $200,000 such bonds. Later the company asked for authority to issue $71,000 additional bonds, and the Board, on May 4, 1904, approved a $50,000 issue. In both instances, it will be noted, the Board refused to approve the full amount desired by the company.

The total "permanent investments" of the company, on March 31, 1904, as shown by a sworn balance sheet filed in the latter case, amounted to $591,389.82. An appraisal of its property as of November 3, 1903, made for the Board by G. M. Tompson, showed a total estimated cost of $417,385.59, without allowing for "engineering, superintendence, general office, legal or organization expenses." Later Mr. Tompson estimated the additional construction to April 11, 1904, at $62,198.35, making a total estimated cost to that date of $479,583.94, or $111,805.88 less than the total "permanent investments" shown by the company's balance sheet. The bonds finally approved by the Board, plus the capital stock already authorized and issued, amounted in all to $550,000, or $70,416.06 more than Mr. Tompson's estimate

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and $41,389.82 less than the investment in permanent property as shown by the balance sheet.

(6) The engineers of the Commission, with the assistance of the inspection department, have estimated the reasonable cost of the physical property of the company, and their report, dated May 19, 1915, has been made a part of the record of the case. In making this estimate, they allowed 10 per cent for engineering, superintendence, and miscellaneous expenses in connection with construction, and also allowed $7,884.77, the amount claimed by the company, for interest during construction. Their figures compare with the "permanent investments" shown in the balance sheet of May 31, 1915, as follows:—

	Balance Sheet	Engineer's Estimate	Difference
Cost of railway:			
Road and track	$279,751.68	$187,223.17	
Right of way	27,956.22	23,521.22	
Electric line construction	63,480.77	54,133.89	
Organization expenses	34,630.63		
Engineering, legal, etc.		28,487.83	
Interest during construction		17,884.77	
Total cost of railway	$395,809.29	$309,250.88	$86,558.41
Cost of equipment:			
Cars, etc.	$75,063.10		
Electric equipment	60,641.97	$54,583.18	
Miscellaneous	1,477.36	4,248.40	
Total cost of equipment	$137,182.42	$58,831.58	78,350.85
Cost of land, buildings, etc.:			
Land used in operating railway	$ 1,900.00	$ 2,200.00	
Power station and equipment	88,517.28	75,575.00	
Car barn and other building	22,834.05	23,775.00	
Engineering, etc.		10,155.00	
Total land and buildings	$113,251.33	$111,705.00	1,546.33
Total permanent investments	$646,243.05	$479,787.46	$166,455.59

In comparing these figures it must be remembered that the engineers estimated the cost of the present rolling stock and car barn while the corresponding items in the balance sheet, as explained above, represent the cost of the original property. "Interest during construction" is the same in both cases, but in the balance sheet is buried in other items, as is a portion of the engineering and other incidental expenses. The amount ($13,750) reported in the balance sheet as "interest during construction"

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has not been included, as it really represents "discount on bonds" (see above).

The engineers' estimate may also be compared with the similar estimate of cost made by Mr. Tompson in 1904. The comparative figures are as follows:—

	Engineers' Estimate.	Tompson Estimate.
Cost of railway:		
Roadbed and track	$187,223.17	$188,852.01
Right of way	23,521.22	
Electric line construction	54,133.89	60,320.25
Engineering, etc.	26,487.33	
Interest during construction	17,884.77	
Total	$309,250.86	$249,172.26
Cost of equipment	58,831.58	127,132.00
Cost of land, buildings, etc.	111,705.00	103,279.68
	$479,787.46	$479,583.94

In comparing these figures, also, it should be noted that the estimates relate to different rolling stock and different car barns, and that Mr. Tompson made no allowance at all for interest, engineering, or other overhead charges.

The company has made no criticism of the engineers' estimate except so far as it relates to the "cost of railway." Its contention is that many items of expense entered into that cost which are not apparent upon an inspection of the property at the present time and for which the engineers failed to allow. For example, the claim is made that much work in widening, paving, and regrading streets, in building fences, etc., was done under requirement of the various towns. The provisions of the location grants tend to substantiate this claim, but the loss of the original records makes it impossible to determine the actual amounts so expended.

(7) The Readville branch seems to have been virtually abandoned. The cost of this branch is estimated by the engineers of the Commission at $17,000. There is evidence to indicate, however, that the actual cost was greater and that it may have been as high as $25,000.

(8) In a letter dated May 4, 1915, made a part of the record of the case, the company furnished a statement "segregating the floating debt as of December 31, 1914, into the uses to which it has been put" as follows:—

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Amount invested in Construction prior to March 31, 1904	$41,389.82
Amount invested in Construction from March 31, 1904, to Dec. 31, 1914, for which securities might properly be asked	68,603.23
Net Loss in Operation to Dec. 31, 1914	36,770.16
Net Investment in Current Assets	9,236.79
Notes outstanding Dec. 31, 1914	$156,000.00

These figures were substantially the same on May 31, 1915, the chief differences being that the deficit from operation had increased to $43,202.49, and the notes outstanding, to $158,500.00.

Depreciation.

[8] Before attempting to reach any conclusion, after a consideration of the facts above presented, in regard to the amount upon which a fair return must be reckoned in this case, it is desirable to set forth the evidence in regard to the depreciation of the property. In the Middlesex & Boston Rate Case the Commission made the following statement (2 Mass. P. S. C. R. p. 135 [1914]):—

"But for present purposes we can only deal with the petitioner's depreciation in the rough. Among some well-managed street railway companies in other states it has, of recent years, been customary to cover depreciation by charging about 20 per cent of gross revenue to the maintenance of way, structures, and equipment. This is not, of course, an absolutely accurate test, if indeed it is possible to find any accurate test."

Applying this rough test, the accountants of the Commission have prepared a table, made a part of the record of the case, giving a "comparison of actual expenditures for maintenance with an assumed expenditure of 20 per cent of the operating revenue to cover maintenance and depreciation" for the ten years from 1905 to 1914 inclusive. An abstract from this table shows the total maintenance expenditures, in dollars and in percentage of revenues, in each of these years as follows:—

Year.	Maintenance.	Per Cent.
1905	$14,922.78	19.08
1906	13,118.22	15.19
1907	15,290.20	18.76
1908	21,486.06	23.86
1909	9,183.70	11.46
1910 (9 mos.)	8,493.37	15.22
1911	10,926.19	11.77
1912	11,354.47	11.95
1913	15,272.96	16.14
1914	14,574.89	15.31
Average	13,522.34	16.85

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The total deficiency, as compared with the 20 per cent basis, for the whole period, amounted to $35,341.21, or an average of $3,534.12 per year. The company maintains that, in the case of a road like the Blue Hill, the assumed percentage should be 25 per cent, instead of 20 per cent. To quote Mr. Pratt, the company's representative (record, p. 5):—

"In a road of larger gross earnings differently situated, 20 per cent might be a fair figure. Some roads might go lower than 20 per cent and still be setting aside enough for this purpose. It is a question of judgment as to what per cent is proper, and that per cent must vary according to the conditions of the property and the amount of the gross earnings."

The examination of the property made by the engineers and inspection department of the Commission tends to substantiate this claim. The engineers made an estimate not only of the reasonable cost of the property, but also of its depreciated value at the present time. The comparative figures are as follows:—

	Estimated Cost.	Depreciated Value.	Depreciation.
Cost of railway:			
Roadbed and track	$187,223.17	$129,477.24	$57,745.93
Right of way	23,521.22	23,521.22	
Electric line construction	54,133.89	40,908.99	13,224.90
Engineering, legal, etc.	26,487.83	19,390.75	7,097.08
Interest during construction	17,884.77	17,884.77	
Total	$309,250.88	$431,182.97	$78,067.91
Cost of equipment	58,831.58	48,959.16	9,872.42
Cost of land, buildings, etc.:			
Land	2,200.00	2,200.00	
Power station and equipment	75,575.00	32,140.00	43,435.00
Car barn and other buildings	23,775.00	20,433.00	3,342.00
Engineering, etc.	10,155.00	5,477.00	4,678.00
Total	$111,705.00	$60,250.00	$51,455.00
Total permanent property	$479,787.46	$340,392.13	$139,395.33

The company has accumulated no fund of any kind to offset this depreciation. The determination of the amount of depreciation on any particular date is, of course, largely a matter of judgment. The estimate of the engineers is an outside estimate based upon observation of the property.

The following extracts from a report by the inspection department, also made a part of the record of the case, indicate the

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present condition of the roadbed, track, and overhead construction:—

"The heavier sections of rail are in very fair condition, but the lighter sections are becoming badly worn in many places, especially on curves. It would appear that nearly 50 per cent of the ties in the track are ten or more years old. These are in poor condition, and should be renewed very soon. Nearly all of the ties, even those renewed in recent years, are of inferior size as compared with standard specifications.

"There are many curves where guard rails should be installed. Other work connected with the track, such as renewing some of the special work, improving drainage, etc., should be performed in the next two or three years. Many poles are nearing the end of their natural life, and the trolley wire will have to be renewed in many places very soon. The fact that the cars are of the single-truck type, with long wheel bases, makes it the more important that the rails and ties be kept in proper condition, and that the curves be well guarded."

The department estimates $16,600 as the "average expenditures required per year to maintain track and overhead structures in a proper condition, judging from the general conditions as found. The table prepared by the accountants (mentioned above) shows that the average expenditure per year for maintenance of way and structures during the ten years from 1905 to 1914 inclusive has been but $6,448.28, and this includes expenditures in removing snow and ice, and in cleaning and sanding the tracks, for which no allowance was made by the inspection department in its estimate.

The engineers of the Commission also report that the engines and generators in the power station "are of types which would not be installed at the present time to perform this work." They estimated the depreciated value at but $9,790 in comparison with the estimated cost of $47,575. It appears that this equipment is rapidly becoming obsolete, and that renewals will probably be necessary in the comparatively near future.

The Basis of a Fair Return.

The circumstances surrounding the history of the company, particularly the destruction of its property and records in 1909,

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make it difficult to determine the amount of investment upon which it is entitled to a return. As will later appear, however, a definite finding upon this point is unnecessary at this time. As stated above, the Board of Railroad Commissioners allowed stock and bond issues totaling $550,000. There is no evidence sufficient, in the judgment of the Commission, to rebut the presumption that this amount represented investment "honestly and prudently" made. The status of the additional investment of $41,389.82 claimed by the company to have been made prior to March 31, 1904, is less clear.

[9] Investigation shows that $11,000 of this claimed amount really represented "discount on bonds," and cannot, therefore, be considered as "investment" at all. The relation of this item to future earnings and profits is considered below. With respect to the balance, the evidence shows that the Board refused in 1903, and again in 1904, to permit the company to issue the full amount of bonds desired, and that it based its decisions upon a careful estimate of the reasonable cost of the property. The road was new at the time, all of its records were in existence, and it is a reasonable assumption that the engineer who made the estimate was acquainted with the difficulties encountered in construction and with the requirements imposed by the various towns. There are indications in his reports that such was the fact. While he made no allowance for engineering, interest, and other overhead charges, the capitalization approved by the Board exceeded his estimate of reasonable cost by $70,317.06, or 12.8 per cent of the amount ($550,000) so approved. In preparing their estimate of cost, the engineers of the Commission allowed 10 per cent for such overhead charges on all items except equipment and interest, or 7.7 per cent of the total, and made the following statement in explanation of this allowance:

"An examination of the returns of ten of the street railway companies which, on the basis of track owned, may be considered in the same class as the Blue Hill street railway, shows the charges for engineering, superintendence, and miscellaneous expenses in connection with construction as an average of 3 per cent of the total permanent investments, varying from a minimum of .5 per cent to 9.6 per cent. It therefore seems that the amount allowed in the estimate, 7.7 per cent, is liberal."

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Upon present evidence, at least, there seems no basis for a conclusion that the capitalization approved by the Board failed to cover all reasonable items of cost prior to March 31, 1904, or that the additional $41,389.82 claimed by the company represented, either in whole or in part, investment "honestly and prudently" made, within the meaning of the rule in the Middlesex & Boston Rate Case.

Since 1904, the situation with respect to the property has, as above indicated, changed in important respects:

[10] (1) The property has depreciated in value. The question raised by this fact is not easy of determination. In a long line of decisions the United States Supreme Court has held that a public service corporation is entitled to a reasonable return upon the "fair value" of the property used for the convenience of the public. This expression "fair value," as used by the court, however, has no fixed and narrow meaning. To quote from the opinion in the Minnesota Rate Cases (Simpson v. Shepard) 230 U. S. 352, p. 434, 57 L. ed. 1511, 1555, 48 L.R.A.(N.S.) 1151, 33 Sup. Ct. Rep. 729:

"The ascertainment of that value is not controlled by artificial rules. It is not a matter of formulæ, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts."

While the court has often taken the cost of reproducing the property into consideration in determining "fair value," ever since the leading case of Smyth v. Ames, 169 U. S. 466, 42 L. ed. 819, 18 Sup. Ct. Rep. 418, it has recognized that there are other matters equally entitled to consideration and "to be given such weight as may be just and right in each case." In the Buffalo Gas Case this thought was expressed by the New York Public Service Commission of the Second District as follows (3 P. S. C. R. [2d Dist. N. Y.] 353, p. 644):—

"The foregoing considerations point with almost irresistible force to the conclusion that what is called the fixing of the value of the property in the public service for the purpose of rate making is not a fixing of value in any proper sense of that word as it is correctly used in our language. It is a determination of what, under all the facts and circumstances of the case, is a just and

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equitable amount upon which the return allowed to the corporation is to be computed."

It has been well stated, also, by the New Hampshire Public Service Commission (3 N. H. P. S. C. R. 174, p. 182):—

"Fair value must, then, be the value which, as between the public and the owners, it is just should be attached to the property for the purpose of measuring the return which the public shall pay to the owners."

The ruling of the Commission in the Middlesex & Boston Rate Case, it may be said, amounts simply to a determination that in this commonwealth, at least, "fair value" may justly be measured by the amount of "capital honestly and prudently invested," rather than by the cost of reproducing the property.

In connection with the doctrine of "fair value," the question of accrued depreciation has been considered by the court. In the Knoxville Water Case, 212 U. S. 1, 53 L. ed. 371, 29 Sup. Ct. Rep. 148, its conclusion was summed up as follows (pp. 13, 14):—

"Before coming to the question of profit at all the company is entitled to earn a sufficient sum annually to provide not only for current repairs, but for making good the depreciation and replacing the parts of the property when they come to the end of their life. The company is not bound to see its property gradually waste, without making provision out of earnings for its replacement. It is entitled to see that from earnings the value of the property invested is kept unimpaired, so that at the end of any given term of years the original investment remains as it was at the beginning. It is not only the right of the company to make such a provision, but it is its duty to its bond and stockholders, and, in the case of a public service corporation at least, its plain duty to the public. If a different course were pursued, the only method of providing for replacement of property which has ceased to be useful would be the investment of new capital and the issue of new bonds or stocks. This course would lead to a constantly increasing variance between present value and bond and stock capitalization,—a tendency which would inevitably lead to disaster either to the stockholders or to the public, or both. If, however, a company fails to perform this plain duty and to exact sufficient returns to keep the investment unimpaired, whether

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this is the result of unwarranted dividends upon over issues of securities, or of omission to exact proper prices for the output, the fault is its own. When, therefore, a public regulation of its prices comes under question, the true value of the property then employed for the purpose of earning a return cannot be enhanced by a consideration of the errors in management which have been committed in the past."

This case, therefore, apparently enunciates the principle that an obligation rests upon the company to keep the value of its property unimpaired, and, if it has for any reason failed to do so, that no return should be allowed on property values which have disappeared through depreciation. The same principle is restated in the Minnesota Rate Cases (Simpson v. Shepard) 230 U. S. 352, p. 458, 57 L. ed. 1511, 1565, 48 L.R.A.(N.S.) 1151, 33 Sup. Ct. Rep. 729. In both cases, however, the court was dealing with the cost of reproducing the property. The real import of these decisions, so far as they relate to depreciation, is indicated by the following extracts:

"The cost of reproduction is one way of ascertaining the present value of a plant like that of a water company, but that test would lead to obviously incorrect results if the cost of reproduction is not diminished by the depreciation which has come from age and use." (Knoxville Water Case, p. 9.)

"It is also to be noted that the depreciation in question is not that which has been overcome by repairs and replacements, but is the actual existing depreciation in the plant as compared with the new one. . . . And when an estimate of value is made on the basis of reproduction new, the extent of existing depreciation should be shown and deducted." (Minnesota Rate Cases, p. 457.)

The extent to which deduction should be made for accrued depreciation must, to some degree at least, be determined by the method employed in ascertaining the gross amount from which such deduction is to be made. Because a method of dealing with depreciation may be sound where such gross amount represents the cost of reproduction new, it by no means follows that the same rule can be rigidly applied where the gross amount represents honest and prudent investment. Under the reproduction cost theory, credit is given to the company for appreciation on items entering into the estimate of cost, and often for what is known as

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"going concern value," and it is entirely consistent with the theory to make a deduction to the extent of existing depreciation on other items. On the other hand, if a fair return is to be measured by the "capital honestly and prudently invested," and if no credit is allowed for appreciation of the property through an increase in land values or higher unit costs of material and labor, it would hardly seem just to deduct the full amount of the accrued depreciation under all the circumstances and without reference to the causes of the failure of the company to make due provision for it.

The ruling of the Commission in the Middlesex & Boston Rate Case was accompanied by the express stipulation "that, if there is mismanagement causing loss, such loss must be charged against the stockholders legally responsible for the mismanagement." In other words, the company is held to the same standard of honesty and prudence in the management and maintenance as in the original acquisition of its properties. It must, so far at least as it reasonably can, keep its investment good. If through some fault of its own it has failed to make due provision for depreciation, it cannot reasonably expect the public to pay a return upon that portion of the investment which it has neglected to preserve. But under a consistent application of the investment theory, it would seem in general that deduction should be made for the depreciation which comes from age and use in so far only as the failure to make provision for it is due to the payment of unwarranted dividends, or is otherwise attributable to mismanagement.

In this case, the stockholders have received no dividends whatever. In view of the low earnings, the character of the territory in which the company operates, and its past and present efforts to increase its revenues, and after a careful consideration of its history, the Commission is of the opinion that the failure to make provision for depreciation and the virtual loss of invested capital caused thereby cannot justly be ascribed to mismanagement. To sum the matter up, the property has depreciated in value in the public service, and the stockholders have had no dividends. On the other hand, the public served has been receiving transportation at less than real cost, and has, in effect, used up a portion of the property without giving an equivalent in return. As stated in the Middlesex & Boston Rate Case, to hold under these circumstances

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that the accrued depreciation should be deducted would amount to saying "that money lost during the earlier stages of a public service enterprise is irretrievably lost by the stockholders; that if, perchance, rates have been fixed so low that the ratepayer has, for a period of years, obtained a service at less than cost, this is the permanent misfortune of the stockholders,— and that the public should never at any time and under any circumstances be called upon to make up a deficit thus incurred." (2 Mass. P. S. C. R. p. 108 [1914].)

Under the circumstances of the case, then, we rule that, in determining the revenues to which this company is fairly entitled, allowance should be made for an amount equal to a fair return upon all the "capital honestly and prudently invested," without deducting accrued depreciation. In ruling to this effect, however, we must not be understood as deciding that the company can, if it earns the amount to which it is entitled, properly pay dividends to its stockholders before the depreciation and other deficits from past operation have been made good. That is a question which it is unnecessary to decide at this time.

[11, 12] (2) Property has been destroyed and sold. If property of a company is destroyed by fire or some similar catastrophe before it reaches the end of its usefulness, or if it is voluntarily sold by the company and a loss results over and above the accrued depreciation, it would seem that the amount of this loss should be deducted in determining the basis of a fair return. Such losses are risks which the stockholders assume and for which the company must be held responsible. In this case the loss on the property destroyed in the fire of 1909 was inconsiderable; it appears that the amount recovered from insurance and salvage was large and substantially equal to the depreciated value. The facts were otherwise in the case of the cars which were sold. The selling price was low, and the loss, over and above accrued depreciation, amounted to fully $11,000. In addition, the evidence shows (see above) that the entire amount received from insurance, salvage, and the sale was not reinvested in permanent property. To the extent of $21,327.18 it was used in reconstructing roadbed and track, an expense properly chargeable against operation. Clearly, funds so used can no longer be regarded as part of the

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"capital invested," whatever bearing they may have in determining the reasonable charges against operation.

[13] (3) The operation of part of the property has been virtually discontinued. The evidence shows that the short branch line to Readville has been little used in recent years. To all intents and purposes it has been discontinued. In the Middlesex & Boston Rate Case the Commission said (2 Mass. P. S. C. R. pp. 115–118 [1914]):

"We rule that on the present rate application the Middlesex and Boston is to be dealt with as a single company. But this ruling is not to be construed to prevent the Commission now, or at any time, from dealing with the soundness and prudence of any investment made, either by a consolidated company or by any of its constituent companies, when the soundness and prudence of such investment is a material question to be determined in reaching a proper conclusion as to a fair rate. It is only money honestly and with reasonable prudence invested in a public utility that is entitled to earn a full return. If the Commission finds a street railway company investing money in building extensions contrary to the dictates of reasonable prudence and sound business judgment, it is its plain duty to refuse any, or at any rate a full, return upon such investment."

In that case, although the evidence was indisputable that certain lines were operated at a heavy loss, nevertheless the Commission was satisfied "that it would not be in the public interest for the Commission now to rule or to find that any of the capital invested in the creation of any of these lines was so recklessly and imprudently invested as now to warrant or require us to adopt a policy likely to result in abandoning or tearing up some of these lines." (p. 116.)

In view of the economic value, in general, to the commonwealth of even street railway lines whose existence seems hardly justified from the point of view of traffic, the Commission is not disposed to deny a return upon investment on the ground that an extension was built "contrary to the dictates of reasonable prudence and sound business judgment," except in the clearest cases. The line in question, however, seems on the evidence presented to be of so little economic value to anybody that we should hesitate to approve an increase of rates upon the other lines merely for

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the purpose of enabling the company to earn a return upon the investment in this branch, which probably amounts to about $25,000. (See above.)

(4) Permanent additions and improvements to property have been made. The company claims to have invested, since the time of the last issue of stock or bonds, some $68,603.23 in additions and improvements to the property. A detailed list of these expenditures which has been furnished includes a $2,750 item, representing discount on bonds, but with this exception they appear on their face to represent investments in permanent property, including the major portion of the investment in the Readville branch. The cost estimate prepared by the Commission's engineers indicates that there have been substantial increases in the investment in roadbed and track and in land and buildings since the time of the Thompson appraisal, especially if allowance be made for items of original cost which are not apparent upon an inspection of the property at the present time. An accurate checking up of the expenditures reported, however, is practically impossible, owing to the destruction of the records and of a portion of the property itself in the fire of 1909.

To sum up the situation: Starting with an investment of $550,000 in 1904, approved by the Board of Railroad Commissioners, the evidence shows that certain deductions and additions should be made representing property losses and property gains since that year. If $11,000 be deducted for the loss on the cars sold and $21,327.18 for the reconstruction expenditures, and if no allowance whatever be made for additions and improvements since 1904, including the Readville branch, the amount on which a fair return must be reckoned would still be $516,262.82. Even if it were no more than $500,000 the need for additional earnings can be demonstrated, as shown below. The Commission must not be understood as deciding or even intimating that $500,000 is the amount upon which a fair return should be based. Our finding is merely that the amount is certainly not less than that sum. Owing to the uncertainty of the records, the question as to the actual amount is left open, without prejudice, for consideration in any future proceedings. For present purposes a more definite finding is unnecessary.

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The Need for Additional Earnings.

[14] Assuming, then, an investment of only $500,000 (an assumption which we have no doubt is distinctly unfair to the company), represented by the $300,000 outstanding stock and $200,000 of the outstanding mortgage bonds, and assuming no interest payments during the past ten years except upon such a bond issue (eliminating the floating indebtedness entirely from consideration), the net earnings over and above operating expenses and fixed charges would have been as follows:—

Year.	Amount.	Per Cent Upon Stock.
1905	$3,488.31	1.16
1906	11,989.95	4.00
1907	5,662.59	1.88
1908	5,110.82	1.70
1909	11,602.14	3.83
1910	8,393.17	2.80
1911	21,313.08	7.10
1912	22,314.87	7.43
1913	16,053.21	5.35
1914	17,262.83	5.75
1915	13,844.01	4.61

Bearing in mind that the company made no provision whatsoever for depreciation in these years, and that this table makes no allowance therefor or for necessary charges to the profit and loss account, the conclusion is irresistible that the fare-paying public has been and is now receiving service at substantially less than cost. For present purposes it is unnecessary to analyze the results from operation more closely.

[15] In fairness to the company, however, it should be said that even if $500,000 be taken as the entire amount of invested capital upon which a fair return must be reckoned, it does not follow that no part of the interest paid upon the floating indebtedness is a reasonable and proper charge upon operation.

For example,

(1) While the $21,327 of capital funds used for reconstruction in 1909 can no longer be considered a part of the investment, it may be urged that the company is entitled to have the sum gradually liquidated from earnings, and to receive interest upon it to the extent that it remains unliquidated. It appears that the reconstruction was necessary and desirable. If the company had

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not used available capital funds for this purpose, it would have had to borrow money (since earnings in any one year were not sufficient to provide for this extraordinary maintenance expense), and to pay interest upon the debt. It would seem that the amount is similar to an operating deficit and to be treated accordingly.

[16] (2) While the $13,750 representing discount on bonds likewise cannot be considered a part of the "capital invested," the company is entitled to have this sum liquidated, or amortized, from earnings during the life of the bonds, and to receive interest upon it to the extent that it is unamortized. The item means that the bonds were sold for $13,750, less than face value, and to this extent were insufficient to provide the funds found by the Board of Railroad Commissioners to be "reasonably requisite" for lawful purposes. The deficiency was supplied through floating indebtedness, and the company is fairly entitled to interest upon this indebtedness until the impairment of capital so caused has been made good from earnings.

Other similar considerations may be urged, but it is unnecessary at this time to make a thorough analysis of the floating debt. It is sufficient to note, in connection with the table above presented, that, in determining the earnings to which the company is fairly entitled for the future, due allowance must be made for maintenance and depreciation. In the past, not only has no provision been made for depreciation, but it is even doubtful whether due provision has been for ordinary maintenance. Certainly the report of the Commission's inspection department indicates that the expenditures for this purpose must be largely increased during the next few years if proper physical condition is to be maintained. The total appropriations for maintenance and depreciation under present conditions should, we think, at least equal 25 per cent of operating revenues and probably should be greater.

The need for largely increased earnings is, indeed, patent, and this conclusion might easily have been reached by the Commission by a shorter route than we have followed. We have gone into the history of the property at some length, because we feel that when a company proposes to increase its rates the public which it serves is entitled to a knowledge of the essential facts with respect to its history and its operations, and also because

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certain of those facts serve to illustrate somewhat important general principles.

The Cost of Operation.

Before dealing with the proposed increase in rates one further question must be considered. To what extent, if any, can the company reasonably be expected to increase its net earnings through a reduction in operating expenses? As already stated, it is managed under contract by the Stone & Webster Management Association, and a copy of this contract, which is renewed from year to year, is on file in the record of the case. Summed up briefly, it gives the company the services of certain Stone & Webster officers, who act respectively as its vice president and treasurer, and also the opportunity to secure the expert advice of the various departments of the management association as occasion requires.

Various other companies are managed in a similar way by this association. The total expense of the Boston office, it appears, is determined, and the charge to the companies covered by that office is based on the proportion which the gross earnings of each company bears to this total expense. In the case of certain of the more prosperous companies, a percentage of profit is added to the amount thus obtained, but no such profit is assessed in the case of the Blue Hill company. Its share of the expense for the year ended June 30, 1914, amounted to $1,616, and the charges in previous years have been substantially the same.

The total operating expenses per car mile are low in comparison with the similar expenses of other companies in the commonwealth. The accountants of the Commission have examined the detailed expenditures for the 1914 year, and find no important ground for criticism. It appears that $1,129.03 was paid to the general manager of the Brockton & Plymouth company for "advising" the Blue Hill superintendent, and, in view of the elaborate contract with the management association, it is difficult to understand the necessity for such advice. On the whole, however, there seems to be no reason to believe that expenses of operation could be reduced materially, if at all.

The Eight Cent Fare.

[17–19] It remains to consider whether the method of increas-

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ing revenues proposed by the company is a just and reasonable method. In brief, it is to raise the cash fare in each fare zone from 6 cents to 8 cents.

An increase in rates may be unwise, even though revenues are inadequate. The fact that an increase is likely to discourage traffic has, indeed, been recognized by the company in this case. At the public hearing, Mr. Pratt, the vice president, made the following statement (record, pp. 38–9):

"There is an economic demand for transportation at a certain price, and if you have to pass that point, instead of your earnings going up, they are going down. I do not know of any way to find out except to try. How can any of us tell whether we will ride more in a year on an 8-cent fare until it is tried out? I do not know any way to discover a question of that sort except by trying. We might find that with an 8-cent fare our gross earnings are less. I do not think so, or I would not be here." Although an increase to 8 cents should mathematically produce $30,000 or more of additional revenue, the company does not believe that it will bring in more than about $10,000. To quote again from the record of the public hearing (pp. 67, 68):

The Chairman. If the same number of passengers ride, that ought to give you an increase of about $30,000?

Mr. Pratt. It may be $10,000 or $12,000, possibly only $8,000. It will not give us the same ratio.

The Chairman. You assume that the increase in the rate of fare will be offset to some considerable extent by a decrease in the number of riders, owing to the change in the fare?

Mr. Pratt. That is my belief.

The Chairman. You estimate about $10,000?

Mr. Pratt. I should think so. It is only a think. There is no way of demonstrating. Another man might put it in another figure, but I should think it would be about that.

The view that the proposed increase in fare, if allowed, is unlikely to result in a proportionate increase in revenue, is confirmed by the experience of the Blue Hill company itself in changing from the 5-cent to the 6-cent fare unit in 1908. The precise effect of this change is problematical, but no one claims that the 20 per cent increase in fare resulted in a 20 per cent increase in revenue. To quote Mr. Pratt again (record, p. 92):

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"I think that 10 or 12 per cent is the real value that we are getting out of the 6-cent fare. The same applies to the Brockton & Plymouth."

Judged from the point of view of wise management, there is at least a question whether an 8-cent fare would be consistent with the best interests of the company itself. We have not undertaken to form a definite opinion in regard to this matter, however, because it is a question of judgment upon which the officers of the road ought fairly to be allowed, within reasonable limits, free exercise of their own discretion.

Assuming that the proposed increase would produce as much as $12,000 additional revenue, and we think this is a very liberal estimate, there is no ground for a claim that it would result in excessive and unreasonable profits to the company. If this were the only test to be applied, the Commission would, without hesitation, approve the new schedule as filed. But it is not the only test. It is necessary to consider whether or not the fares proposed would in any respect be "unjustly discriminatory" (see Stat. 1913, chap. 784, §§ 21 and 22). The question thus raised is not easy of determination.

Under the system prevailing upon the street railways in this commonwealth, and indeed generally throughout this country, fares are not based accurately upon distance traveled, but a flat fare is charged for any ride, no matter what its length, within the limits of a particular zone. Strictly speaking, this discriminates between the long-haul and short-haul rider, but it is convenient to both the public and the companies, and it has never been considered that the discrimination which it involves is unjust and unreasonable, so long as the unit of fare is not unduly high.

The ordinary unit, and the one which still prevails on most of the street railway lines in the commonwealth, is 5 cents. Of late years certain companies have changed to a 6-cent unit, but this is the first case which has been brought to the attention of the Commission where a change to a larger unit than 6 cents has been proposed. If the schedule which has been filed should take effect, the cash fare for any ride upon the lines of the Blue Hill company, no matter how short it might be, would be 8 cents. To illustrate, a resident of Milton living a quarter of a mile from

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Mattapan square would be obliged to pay 8 cents to ride to the point of connection with the lines of the Boston Elevated Railway Company. With such a unit fare the discrimination between the long-haul and the short-haul rider, it would seem, is unduly accentuated. The Commission is strongly inclined to believe that the 8-cent unit passes the limit of what may reasonably be allowed in this direction, and that it is open to criticism on the ground of unjust discrimination.

It is unnecessary, however, to decide this question at this time, because the company, while it has not formally withdrawn the schedule which it originally filed, has indicated that it is not wedded to any particular scheme for the increase of its revenues, and that it is ready and willing to try an alternative plan if the Commission should deem it desirable. In this connection it should be said that the attitude of the company throughout has been fair and reasonable, and that it has cheerfully co-operated with the Commission in the investigation of its affairs.

The Additional Fare Zone Plan.

In a letter to the Commission dated May 3, 1915, which has been made a part of the record of the case, the company outlined a possible alternative plan. Briefly this plan provides for an additional fare zone and the reduction of the unit fare from 6 to 5 cents. The zones under this management upon the main line would be as follows:

	Miles.
Mattapan Square to Blue Hill street	4.36
Blue Hill street to Unitarian Parish Hall	2.61
Unitarian Parish Hall to East Sharon Village	2.85
East Sharon Village to Stoughton	2.85
	12.67

The company states that the "fare limit from Mattapan square to Blue Hill street is too long compared with the others, but the conditions are such that we think that Blue Hill street is the only logical point for the termination of this fare limit." To offset this difference the company suggests special workingmen's tickets in the morning and evening on the southern end of the line to accommodate the factories which are located in Stoughton and Canton. It will be noted, also, that the four zones proposed do not overlap at any point.

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The inspection department of the Commission has made a careful study of traffic conditions on the Blue Hill system, and considered, among other things, the probable effect of the additional fare zone and reduction of unit fare suggested in this letter. Upon this point the comments in its report (on file in the record of the case) are as follows:

"Using the data on these plates 35 and 36, the relative values of the present and proposed fares and zones is determined. The proposed four zones of 5-cent fares show an increase in revenue on the main line of 13.4 per cent over the present three zones of 6-cent fares. The revenue originating on the Norwood branch would be decreased 16⅔ per cent by the proposed change in fare. The above figures are based on the assumption that the change in fares would not change the traffic. It is probable that this change may tend to decrease the volume of traffic on some portions of the line and to encourage it on others. It would seem that the probable increases would tend to balance, at least in part, the decreases in traffic. The fact that over 27 per cent of the revenue for the year 1914 was received on Sundays would tend to strengthen this assumption, as a good part of the Sunday receipts are obtained in the summer, due in large part to the heavy pleasure riding on the northerly end of the line. The reduction of the fare between Mattapan and the Blue Hill reservation would probably tend to increase traffic. Using the above percentages, table No. 3 is derived, giving the probable earnings based on those for the calendar year of 1914."

This table shows a probable increase in revenue of about $10,500, or 11.5 per cent of the 1914 earnings. No allowance, however, was made for the workingmen's tickets.

The alternative plan has certain manifest advantages. Under it the fares for short distances would actually be reduced, a change which should result in encouraging rather than discouraging traffic, and which is clearly in the public interest. On the other hand, it is open to criticism in certain respects. In the absence of overlapping fare limits, the fare for short rides between certain points would be increased from 6 to 10 cents. This is a disadvantage which it is impossible altogether to avoid. Under the present system, indeed, the fare for comparatively short distances at certain points is 12 cents. But it is a disadvantage

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which can be mitigated, we believe, if certain modifications in the plan are made.

The chief objection relates to traffic between the important points, Stoughton and Canton stations. We think the company should sell two-part tickets good at all hours of the day for a ride between these two points, which are only 4.22 miles apart, at the rate of eight tickets for 50 cents. The first part of the ticket can be collected in one zone and the second part in the other. This will give a rate between these points substantially equal to the present fare, and will, on the whole, accommodate the residents of this territory better than the workingmen's tickets which the company has suggested, since the two-part tickets will be good at all times. It will, of course, be possible to ride between Stoughton and East Sharon village, or between East Sharon village and Canton station, for 5 cents. We think, also, that the two zones which meet at Blue Hill street should overlap, so that persons traveling from the southern end of the road may reach the Blue Hill waiting room without paying an extra fare after passing Blue Hill street. To offset these changes, we think it reasonable that the unit fare in the zone between Mattapan square and Blue Hill street, owing to the length of this zone, should be 6 cents instead of 5 cents.

If these changes are made and the calculations of the inspection department of the Commission are correct, the new plan should produce between $10,000 and $12,000 additional revenue, or substantially the amount which the company estimated would be produced by the original plan.

It is, of course, possible that, if this new plan with the modifications suggested is introduced, certain inequities will develop which will demand correction. It is also possible that the calculations as to its effect upon revenues may prove entirely erroneous. We believe, however, that the experiment is justified, and that the plan should be tried for at least one year. In the meantime, the company should observe closely its effect upon traffic and revenues, and keep records which will show this effect so far as practicable. At the end of the experimental period, the question of possible further modifications can be taken up by the Commission with the company and its patrons.

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ORDER.

Notice of the Blue Hill Street Railway Company relative to increase in rates of fare.

It appearing that on March 19, 1915, an order was entered suspending until May 15, 1915, the rates and charges stated in the schedule described in said order; and that said rates and charges were further suspended to August 1, 1915, by successive orders dated respectively May 13, 1915, June 12, 1915, and July 13, 1915; and—

It further appearing that a full investigation of the matters and things involved has been had, and that the Commission on the date hereof has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof; it is

Ordered that the Blue Hill Street Railway Company be hereby notified and required to establish on all its lines, within thirty days of the date hereof, upon not less than three days' notice to the Commission and the general public by filing and posting in a conspicuous manner in its waiting rooms and cars, in the manner prescribed in § 20, chapter 784 of the Acts of 1913, a schedule readjusting its rates and fares and fare limits for the transportation of passengers upon the following basis:

The regular rate of fare for the transportation of a passenger within section A shall be 6 cents and within sections B, C, and D 5 cents respectively.

A passenger paying one fare may ride in a regular passenger car only to the point indicated as the boundary of the section wherein the fare is paid, unless the tariff definitely provides for additional service.

Tickets shall be issued, good for bearer, in books or strips of eight for 50 cents, which shall be accepted for a continuous journey between Stoughton square and Canton station or intermediate points.

Pupils' ticket shall be issued under proper restrictions, in books or strips of ten, and in accordance with the provisions of the statutes.

Section A.—Between Mattapan square, city of Boston, and corner of Washington and Blue Hill streets, town of Canton; including the branch to Readville square, city of Boston.

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Section B.—Between Blue Hill waiting room, near Milton-Canton town line, and Unitarian Parish Hall, town of Canton.

Section C.—Between Unitarian Parish Hall, Canton, and corner of Bay and Central streets, village of East Sharon; including the branch to the Canton-Norwood town line.

Section D.—Between corner of Bay and Central streets, village of East Sharon and Stoughton square, town of Stoughton.

Free transfer privileges shall be furnished so that in all cases passengers may ride between any points located within the sections above indicated for a single fare, even though a change of cars may be necessary.

It is further ordered that the Blue Hill Street Railway Company be and is hereby notified and required to cancel the rates and charges stated in the schedule specified in said orders of suspension, so far as they are inconsistent with the basis of fare herein prescribed;

It is further ordered that a copy of this order be filed with said schedule at the office of the Commission, and a copy hereof be forthwith served upon the Blue Hill Street Railway Company.

MASSACHUSETTS PUBLIC SERVICE COMMISSION.

IN RE NORFOLK & BRISTOL STREET RAILWAY COMPANY.

[P. S. C. 888.]

Return — Basis — Capital honestly and prudently invested — Deduction for accrued depreciation.

1. In determining the revenue to which a street railway company is entitled, allowance was made for an amount equal to a fair return upon the capital honestly and prudently invested, without deducting the accrued depreciation, where failure to make due provision for depreciation was not due to payment of unwarranted diyidends or otherwise attributable to mismanagement.

Intercorporate relations — Contract — Payment of operating officials.

2. An arrangement between connecting street railway companies whereby one furnishes operating officials for the other should be on a definite cash basis, and expressed in a written contract, which should be filed with the Commission.

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Intercorporate relations — Accounting — Supplies sold and equipment rented.

3. Charges of a street railway company for supplies sold and equipment rented to other companies should be entered in explicit form in its journal and posted to ledger accounts, rather than recorded in the cash book after payment is made.

Return — Allowance for salaries — Payment out of surplus.

4. An amount paid to the general manager of a street railway company as adjustment of back salary was not considered in determining whether the company was entitled to greater earnings, where the payment was made out of surplus funds, although the amount of the salary was open to criticism.

Street railways — Equipment — Automobiles.

5. The number of automobiles purchased by a street railway company should be carefully restricted to the needs of the service, in view of the fact that automobile depreciation is very rapid and maintenance changes are large.

Accounting — Street railways — Automobiles — Salaries of operating officials.

6. Automobiles owned by a street railway company should be entered under "Miscellaneous Equipment" in its returns; and the salaries of the general manager and the superintendent should not be charged to "maintenance," but to "general and miscellaneous expense," in accordance with the uniform system of accounts for electric railways prescribed by the Interstate Commerce Commission.

Accounting — Vouchers for payments.

7. A public service corporation should issue vouchers for all payments, sufficient in detail to express the transaction involved, and to be approved by an official before payment is made.

Accounting — Necessity for correct method of, in fixing rates.

8. A correct method of accounting by public service corporations is a fundamental requirement for proper public regulation, especially where the investment rather than the reproduction cost is taken as a controlling basis for fixing rates.

Depreciation — Street railroads — Allowance of percentage of operating revenue.

9. The Massachusetts Commission, in estimating the amount of revenue necessary for a street railway company, did not apply the rule that 20 per cent of operating revenues is the proper proportion necessary to cover maintenance of way, structures, and equipment and depreciation under average conditions, but allowed a greater percentage where the road was small with relatively low gross earnings and the accrued depreciation was relatively large.

Depreciation — Reserve fund — Additions and improvements — Sinking fund.

10. An amount expended by a street railway company out of surplus earnings for additions and improvements, and the amount of a sinking fund set aside to pay outstanding bonds, were held in effect

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equivalent to a depreciation reserve fund, so long as the amounts were not capitalized.

Depreciation — Street railroads — Amount.

11. It is not necessary for a street railroad company to accumulate a depreciation reserve or surplus fund equal to the entire amount of a depreciation of $110,000 as compared with an investment of $400,000, although due provision should be made.

Return — Amount — Allowance for depreciation — Savings in economies in management — Financial depression.

12. A street railway company was authorized to increase its rates of fare so that additional revenue would be produced that would permit a 6 per cent return to its stockholders and an adequate allowance to be made for maintenance of way, structure, and equipment and depreciation, taking into consideration savings to be effected by greater economies of operation, although earnings were affected by a financial depression, where it did not appear that the return, after proper deductions, would have been adequate if earning had been normal.

Return — Normal earning power as basis for.

13. The normal earning power of a public service corporation, so far as it can be ascertained, should in general be the controlling basis in adjusting rates.

Constitutional law — Impairment of contracts — Restriction in rates in grant of location.

14. A condition in an original grant of location by a town, restricting the rate of fare to be charged by a street railroad company, is not valid and controlling as against the rate-making power vested in the Massachusetts Commission by the Public Service act.

Rates — Charge for transfers — Length of ride.

15. A street railway company was not justified in charging for transfers where the total length of ride secured by the privilege was no longer than the ride secured by the payment of a single fare upon other parts of the system where cars are routed through.

Discrimination — Street railways — Sale of ticket books.

16. A street railway company, on being authorized to sell books of 50 tickets for $2.75, each ticket good for a 6-cent fare, was required also to sell books of 18 tickets for $1, on the ground that it was desirable that such tickets should be made available upon payment of a comparatively small sum.

Service — Reduction of fare zones — Abolition of transfers.

17. A street railway company was authorized to reduce its fare zones on a branch line from two to one, and to abolish the privilege of transferring to the main line, where the reduction in zones offset the loss of transfers.

[August 19, 1915.]

NOTICE of Norfolk & Bristol Street Railway Company relative to increase in rates of fares and adjustment of fare limits and transfer privileges. Authority to increase cash fare from 5 to 6

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cents, granted; authority to sell ticket books, to change fare zones, and to abolish transfer privileges, granted in part; authority to charge for transfers, denied.

Appearances: Robert H. Holt, Esq., for Norfolk & Bristol Street Railway Company; George R. Ellis for Board of Trade of Foxborough; Elbridge J. Whitaker for Selectmen of Walpole; F. I. Sherman for Board of Trade of Mansfield; James A. Halloran, Esq., for Selectmen of Norwood.

By the **Commission**: The main line of the Norfolk & Bristol Street Railway Company runs from Railroad avenue in the town of Norwood, through Walpole, South Walpole, and Foxborough to the railroad station in Mansfield, with a branch from Foxborough to Wrentham and a shorter branch from Walpole to East Walpole. The main line substantially parallels lines of the New York, New Haven, & Hartford Railroad Company. The total mileage, computed as single track and including trackage rights of .29 of a mile over lines of the Bay State Street Railway Company, is 22.02 miles. The tracks are very largely laid in the public streets, there being less than half a mile of private right of way.

On March 12, 1915, this company filed with the Commission, in accordance with § 20 of chapter 784 of the Acts of 1913, notice of a proposed increase in passenger fares and adjustment of fare limits and transfer privileges, to take effect on May 1, 1915. Briefly stated, it proposes, as stated in this notice:

(1) To make the cash fare 6 cents for every ride within the limits of any fare zone. The present cash fare is 5 cents.

(2) To charge 1 cent for every transfer issued. At present, no charge is made.

(3) To sell ticket books containing 50 tickets, each ticket the equivalent of one cash fare, for $2.75 and books containing 100 tickets for $5.50. At present, there are no tickets of this kind, but special round-trip workingmen's tickets are sold at the rate of 15 cents each, six for 90 cents, which are good on the first two trips in the morning from South Walpole to East Walpole and on the 5 o'clock trip in the opposite direction at night. The regular fare for the round trip is 20 cents. Special round-trip tickets are also sold at the rate of 15 cents each, twenty-five for

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$3.75, which are good at all hours between Foxborough and Wrentham. The regular fare for this round trip is also 20 cents. Neither class of special tickets can be used on Sundays and holidays.

(4) To sell for the use of school children, entitled by law to half-fare transportation, special ticket books containing 34 tickets for $1 and strips of ten tickets for 30 cents. At the present time strips of ten tickets are sold for this purpose for 25 cents.

(5) To issue transfers so that passengers may ride from any point on the East Walpole branch to any point on the main line between Lake avenue in Walpole and the Norwood town line, and *vice versa,* for a single fare plus the 1 cent transfer charge. These transfers are given at present without charge. In addition transfers are issued without charge, so that passengers may ride between the Foxborough-Walpole town line and Diamond street, on the East Walpole branch, Walpole, and intermediate points for a single fare. Transfers are also issued so that passengers may ride from any point on the main line between the Mansfield-Foxborough and the Foxborough-Walpole town lines and any point on the Wrentham branch between its junction with the main line and the Foxborough-Wrentham town line, and *vice versa,* for a single fare.

(6) To establish fare limits as shown by colored lines on a blue-print plan filed with the Commission.

The present limits or zones are as follows:—

Main Line.

Norwood terminus to Lake avenue, Walpole	5.25	miles
Kendal street, Walpole, to Beach street, Foxborough	4.20	"
Pine street, South Walpole, to Leonard street, Foxborough	4.20	"
Foxborough-Walpole town line to Foxborough-Mansfield town line	5.28	"
State Hospital, Foxborough, to Mansfield terminus	4.00	"

Wrentham Branch.

Foxborough Common to Vine street, Wrentham	2.90	"
Foxborough-Wrentham town line to Wrentham terminus	2.317	"

East Walpole Branch.

Walpole Common to East Walpole	2.4	"

These zones overlap, so that on through traffic between Norwood and Mansfield only four fares, not five, are collected. It is proposed, under the plan filed, to have one zone on the Wrentham branch with no transfer privileges, instead of the two present zones with the transfer privileges above described. It

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is also proposed to eliminate the zone between the Foxborough-Walpole and the Foxborough-Mansfield town lines. This will not increase the number of fares for through traffic, but will make necessary the payment of an additional fare for a ride from any point on the main line between the Foxborough-Mansfield town line and Leonard street, Foxborough, to any point between the State Hospital, Foxborough, and the Walpole-Foxborough town line, or to any point between Pine street, South Walpole, and the Norwood terminus, and *vice versa*.

After the filing of the above-mentioned notice the company, after conference with citizens of the towns affected, agreed to modify the proposed schedule of rates, and the Commission received formal notification to that effect on June 21, 1915. The modification is as follows:

"In addition to the ticket books and school children special tickets set forth in the notice, the company proposes to issue strips of ten (10) tickets for fifty cents, good for one ride within any fare limit when tendered for a carriage beginning at a point which the car is scheduled to pass before 8:30 A. M. and between the hours of 5 and 7 o'clock in the evening."

The company estimates that the changes proposed, including the above modification, will, if allowed and if there is no decrease in traffic, produce about $10,000 additional revenue per year. The total operating revenues for the year ended June 30, 1914, were $93,978.31.

On April 27, 1915, the Commission suspended the operation of the new schedule of fares until June 1, 1915, and later the time of suspension was extended to August 20, 1915, "unless otherwise ordered." Public hearings were given on April 27th and May 8th, at which the company presented its case, and remonstrances were offered by selectmen, boards of trade, and citizens of certain of the towns affected. The Commission has, also, with the aid of its experts, made its own independent investigation of the affairs of the company.

History of the Company.

The Norfolk & Bristol Street Railway Company is the successor of the Norfolk Southern Street Railway Company, which was organized under the general laws on November 27, 1897.

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This latter company began operation in the spring of 1899, but on November 22, 1899, went into receiver's hands. The liabilities at the time were as follows:—

Capital stock	$200,000
Funded debt	125,000
Current liabilities	168,000
Total	$493,000

The capital stock had been approved by the Board of Railroad Commissioners on February 10, 1898, and the bonds on May 31, 1899.

At the time of the receivership a syndicate was formed, made up of the following unsecured creditors of the road (from a letter of F. E. Snow to the Board, dated January 2, 1902): National Shawmut Bank, First Ward National Bank, First National Bank of Provincetown, American Loan & Trust Company, American Electrical Works.

Their claims aggregated $98,194.18. This syndicate advanced money to the receiver on receiver's certificates to permit him to continue the operation of the road—advancing in all some $30,000 or $40,000 (record, p. 96). Later, interest on the mortgage bonds was defaulted, and the road was sold, under order of the court, on October 9, 1901, to the syndicate for $190,000.

It appears that this $190,000 represented the money advanced to the receiver, plus the amount paid by the syndicate to purchase the outstanding bonds, plus interest on the whole. In the Snow letter, above cited, it is stated that the syndicate's investment in the road on the date of the letter was

Original unsecured claims	$98,194.18
Interest on same, November 22, 1899, to January 1, 1902, at 5 per cent	10,334.93
Amount paid to purchase bonds plus amount advanced on receiver's certificates plus receivership expenses plus $5,000 contributed as cash capital to Norfolk & Bristol road, with interest at 5 per cent to January 1, 1902	192,641.48
	$301,170.59

In a later letter (dated March 12, 1902) Mr. Snow claimed additional expenditures, amounting to $2,500, for appraisals and other incidental expenses, making a total investment, as claimed by the syndicate, of $303,670.59.

The Norfolk & Bristol Street Railway Company was organized

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on October 23, 1901, and purchased the road from the syndicate for $345,000 under the provisions of chapter 381 of the Acts of 1900. This act, now §§ 144–147 of pt. 3, chapter 463, Acts of 1906, provides for the organization of new companies to take over street railway properties sold at receivers' sales. It contains the following provision:

"The total amount of the capital stock of the company shall be fixed at an amount approved by the Board of Railroad Commissioners, but which shall not exceed the fair cost, as determined by said Board, of replacing the railway and property so acquired, less the amount of any outstanding mortgages to which said railway and property may be subject in the hands of the new company."

This act was fully discussed in the Middlesex & Boston Rate Case, 2 Mass. P. S. C. R. pp. 119, 120 [1914], and it was there decided by the Commission that the purpose of the provision just quoted is "to permit the new corporation to have such amount of capital stock and debts as should fairly represent the replacement cost of the property," and that it makes illegal any debts incurred in excess of this amount and representing a part of the purchase price, and likewise any interest payments upon such debts.

In this case the company, on November 5, 1901, petitioned the Board for approval of $200,000 stock and $150,000 bonds to be used to pay for the property purchased; but the bond petition was subsequently withdrawn without prejudice. The Board, after an appraisal by its engineer, E. K. Turner, fixed the replacement cost at $337,000, to which should be added $5.000 cash capital contributed by the syndicate, and approved the issue of $200,000 stock on March 12, 1902. The balance of the purchase price was covered by an issue of $150,000 short-time notes (record, p. 98).

It thus appears that the amount of stock and debts of the new company, allowing for the $5,000 cash capital contributed, exceeded the replacement cost of the property, as determined by the Board, by $8,000, and exceeded the total investment claimed by the syndicate by $46,329.41. Under the ruling in the Middlesex & Boston Rate Case, $8.000 of the floating debt incurred in the purchase was, therefore, illegal.

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But this is not all. Some time after the new company began operation, it was discovered that the rails and certain portions of the car equipment had been purchased by the Norfolk Southern on a conditional bill of sale, a fact unknown at the time of the receiver's sale. The Lorain Steel Company, assignee of the Johnson company, the unpaid vendor of this property, sued the Norfolk & Bristol in tort for conversion, and the supreme judicial court, on March 3, 1905, found (187 Mass. 500, 73 N. E. 646) that the Steel company was entitled to recover $21,800 plus interest from June 10, 1902. The return for that year shows that $20,408.13, representing the judgment on the rails, was charged to profit and loss. Since no surplus existed at the time, the actual cash was advanced by the syndicate on a note (record, p. 100). How the balance of the judgment was taken care of does not appear.

From these facts it is evident that, when the Board found the replacement cost to be $337,000, it included in its estimate property which had never actually been acquired by the company, which belonged to other parties, and which had cost $21,800. The actual "fair cost, as determined by said Board, of replacing the railway and property so acquired," to use the language of the act, was really about $315,200, and not $337,000. Whether $21,800 of the debt incurred by the company in the purchase was, therefore, illegal, in addition to the $8,000 above mentioned, is a difficult question. It is unnecessary for the Commission to decide it, however, because of what subsequently took place.

In 1908 the company effected a noteworthy reduction of liabilities. According to its statement, the earnings at that time were so low that it was deemed advisable, in order to facilitate a contemplated issue of bonds, to reduce the floating liabilities to a certain extent, "so the holders of the notes canceled $69,000 of the notes and all of the accrued interest, which had accrued at that time, making a total cancelation of liabilities of over $140,000" (record, p. 6). The returns for the year ended September 30, 1908, show that $69,408.13 "notes payable" and $77,760.33 "accrued interest" were credited to profit and loss during the year, a total of $147,168.46. It would seem that this cancelation effectively disposes of any question relative to illegal debt incurred at the

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time of the purchase. It is interesting to note that the $46,329.41 by which the stock and notes issued at the time of the purchase exceeded the total investment claimed by the syndicate (see above), plus the $21,800 judgment on the rails and other property, very nearly equals the face value of the notes canceled.

It appears that the company is still controlled, through the ownership of stock, by the syndicate which was formed at the time of the receivership (record, p. 100). For a time, after the reorganization, the road was managed by Stone & Webster, but since 1904 the present management has been in charge. Up to the present time there has been no increase in fares. One reason for this may have been the fact that in the original grants of locations in some, if not all, of the towns, there were conditions restricting the company to a fare of 5 cents within the town limits (record, p. 9). The following table shows the population in 1900, 1905, 1910, and 1915, of the towns in which it operates and the per cent increase in each case from 1900 to 1915:—

	1900.	1905.	1910.	1915.	Per Cent.
Norwood	5,480	6,731	8,014	10,970	100.2
Walpole	3,572	4,003	4,892	5,478	53.3
Foxborough	3,266	3,364	3,863	4,115	26.0
Mansfield	4,006	4,245	5,183	5,765	43.9
Wrentham	2,720	1,428	1,743	2,393	12.0 [1]
Total	19,044	19,771	23,695	28,721	50.8

[1] Decrease.

A part of Wrentham was set off as Plainville April 4, 1905, which accounts for the decrease of population between 1900 and 1905.

No attempt has been made to carry on a freight and express business. From time to time, it appears, power has been sold, and in 1911 as much as $5,572.76 was received in income from this source. At present no power is being sold.

The Company's Income Record.

The following table shows the results from the operation of the road, as shown by its annual returns, from the beginning of operation after the receivership up to and including the year ended June 30, 1915:—

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Norfolk & Bristol Street Railway Company.

Year.	Operating Revenue.	Operating Expenses.	Net Operating Revenue.	Miscellaneous Income.	Gross Income Less Operating Expenses.	Deductions From Income.	Net Divisible Income.	Per Cent.	Dividends Paid.	Surplus or Deficit for Year.	Profit and Loss Adjustments.	Total Surplus.
1902	$39,436.25	$33,974.96	$5,461.29	.....	$5,461.29	$9,124.63	$3,663.54[1]	.....	.....	$3,663.54[1]	$97.22[2]	$3,760.76[1]
1903	54,703.54	51,746.67	2,956.87	.....	2,956.87	12,186.48	9,229.61[1]	.....	.....	9,229.61[1]	46.05[2]	13,036.42[1]
1904	50,011.33	54,915.17	4,903.84[1]	.....	4,903.84[1]	12,222.12	17,125.96[1]	.....	.....	17,125.96[1]	.....	30,162.38[1]
1905	55,718.45	57,621.49	1,903.04[1]	.....	1,903.04[1]	12,462.51	14,365.55[1]	.....	.....	14,365.55[1]	23,308.27[2]	67,836.20[1]
1906	68,135.15	68,056.42	78.73	.....	78.73	1,843.93	1,765.20[1]	.....	.....	1,765.20[1]	.....	69,601.40[1]
1907	69,028.71	60,494.11	8,534.60	.....	8,534.60	208.08	8,326.52	.....	.....	8,326.52	.....	61,274.88[1]
1908	70,564.21	56,546.10	14,018.11	.....	14,018.11	40,695.77	26,677.66[1]	.....	.....	26,677.66[1]	147,168.46	59,215.92
1909	75,176.54	55,968.28	19,208.26	.....	19,208.26	10,559.45	8,648.81	.....	.....	8,648.81	.....	67,864.73
1910[3]	56,898.43	44,229.71	12,668.72	.....	12,668.72	9,451.95	3,216.77	.....	.....	3,216.77	.....	71,081.50
1911	91,527.16	68,814.11	22,713.05	$59.77	22,772.82	11,160.23	11,612.59[1]	.....	.....	11,612.59	.....	82,694.09
1912	93,391.55	70,450.50	22,941.05	1,243.79	24,184.84	12,095.59	12,089.25	3	$6,000.00	6,089.25	.....	88,783.34
1913	96,007.97	74,356.99	21,150.98	463.46	21,614.44	13,305.53	8,308.91	3	6,000.00	2,308.91	9,600.00[2]	81,492.25
1914	93,978.31	79,247.46	14,730.85	269.51	15,000.36	15,064.44	64.08[1]	.....	.....	64.08[1]	.....	81,428.17
1915	88,435.10	71,804.34	16,630.76	416.17	17,046.93	14,549.92	2,497.01	.....	.....	2,497.01	1,541.22	85,466.40
	$1,003,012.70	$848,726.31	$154,286.39	$2,452.70	$156,739.09	$174,930.83	$18,191.74[1]	.....	$12,000.00	$30,191.74[1]	$115,658.14	

[1] Deficit.
[2] Debit.
[3] Nine months.

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This record shows that stockholders have never received any dividends except in the years 1912 and 1913, when 3 per cent was paid. Earnings steadily increased up to 1913, but have been falling off since that year.

The Company's Investment Record.

The book assets and liabilities of the company on June 30, 1915, were as follows:—

Norfolk & Bristol Street Railway Company—General Balance Sheet as of June 30, 1915.

Assets.		
Cost of Railway:		
Road and track	$231,398.22	
Electric line construction	51,507.72	
Miscellaneous equipment	292.70	
Total cost of railway owned		$283,198.64
Cost of Equipment:		
Cars and other rail equipment	41,112.15	
Electric equipment of cars	49,823.35	
Total cost of equipment owned		90,935.50
Cost of Land and Buildings:		
Land and buildings	40,982.71	
Power plant	59,140.88	
Total cost of land and buildings		100,123.59
Total cost of permanent property		474,257.73
Cash and Current Assets:		
Cash	1,019.95	
Accounts receivable	700.52	
Unexpired insurance	1,020.30	
Total cash and current assets		2,740.77
Miscellaneous Assets:		
Material and supplies	5,226.36	
Sinking fund	6,489.52	
Total miscellaneous assets		11,715.88
Grand total		$488,714.38
Liabilities.		
Capital stock		$200,000.00
Funded debt		200,000.00
Current Liabilities:		
Salaries and wages	$ 325.69	
Accounts payable	1,422.29	
Total current liabilities		1,747.98
Accrued Liabilities:		
Taxes accrued and not yet due		1,500.00
Profit and loss—surplus		85,466.40
Grand total		$488,714.38

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The records show that all of the stock and all of the bonds were issued under the supervision and with the specific approval of the Board of Railroad Commissioners, as follows:—

$200,000 original stock—approved on March 12, 1902.
150,000 mortgage bonds " " October 3, 1908.
50,000 " " " " December 15, 1909.
$400,000 Total stock and bonds approved.

There are no outstanding notes, and only the small current liabilities of less than $2,000. Since the date of the last bond issue, the returns indicate that the company has made permanent additions and improvements to its property costing $30,009. The funds for this purpose have been furnished from surplus earnings.

The table included in the report of the Commission in the Blue Hill Case, decided July 31, 1915, shows that the book value of the permanent property of the Norfolk & Bristol per mile of track (all tracks computed as single track) is very low in comparison with the similar book values of other street railway companies in the commonwealth, amounting, as it does, to a total of only $21,627 per mile. A further test of the validity and soundness of the company's investment is afforded by the report of the engineer of the Commission dated August 9, 1915, and made a part of the record of the case. In this report he has estimated the cost of the property, starting with the cost of the original railway in its depreciated condition in 1901, estimated at the prices of material current in that year. The total cost of the property according to his estimate is $449,837.30, which is about $24,000 less than the total of "permanent investments" reported in the company's balance sheet.

[1] In previous decisions, the Commission has taken the position that "under Massachusetts law capital honestly and prudently invested must, under normal conditions, be taken as the controlling factor in fixing the basis for computing fair and reasonable rates" (see Middlesex & Boston Rate Case, 2 Mass. P. S. C. R. pp. 111, 112, [1914]). In this case the evidence is conclusive that the total capitalization in stocks and bonds issued with the approval of the Board of Railroad Commissioners represents "capital honestly and prudently invested," and that this amount, $400,000, should be taken as the amount upon which a fair return must be reckoned, unless deduction should be made because of

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failure to make due provision for depreciation. This question was discussed by the Commission at some length in its recent decision in the Blue Hill Case [ante, 370]. As the failure of the Norfolk & Bristol company to make adequate provision for depreciation (hereinafter considered) does not appear upon all the evidence to be due to the payment of unwarranted dividends or to be otherwise attributable to mismanagement, in determining the revenues to which it is entitled allowance should be made, in accordance with the principle set forth in the Blue Hill Case, for an amount equal to a fair return upon the investment of $400,000 without deducting the accrued depreciation.

The Need for Additional Earnings.

The income record given above in table A shows that the net divisible income each year since 1909 over and above operating expenses and fixed charges has been as follows:—

Year.	Amount.	Per Cent on Stock.
1909	$ 8,648.81	4.3
1910 (9 mos.)	3,216.77	1.6
1911	11,612.69	5.8
1912	12,089.25	6.0
1913	8,308.91	4.1
1914	64.08*	0.0
1915	2,497.01	1.1

*Deficit.

As they stand, these figures indicate an inadequate return on the stockholders' investment. The apparent net earnings shown above cannot, however, be taken as reflecting the actual financial results of the company's operation, unless it appears that adequate provision has been made for the accumulation of proper depreciation reserve and other necessary surplus funds. It is important, also, to determine whether the net earnings have been reduced through unwise or improper expenditures, and to what extent the financial showing of the company might be improved by greater economies of management and operation.

[2] (1) *Expense in Connection with the Norwood, Canton, & Sharon.*—The Norwood, Canton, & Sharon Street Railway Company is a small road with about 6 miles of track, operating in territory adjacent to the Norfolk & Bristol and connecting with it at

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Norwood. Counsel for the Norfolk & Bristol explaining its relations with this company as follows:

Sometime prior to January, 1913, Mr. Cavanaugh, as general manager of Norfolk & Bristol Street Railway Company, arrived at an understanding with the directors of the Norwood, Canton, & Sharon Street Railway Company under which it was provided that the Norfolk & Bristol would do the business of operating the Norwood, Canton, & Sharon. That is, it would allow Mr. Perry, its superintendent, and Mr. Cavanaugh to use a part of their time in managing and superintending the operation of the Norwood, Canton, & Sharon. In return for this the Norwood, Canton, & Sharon was to pay the Norfolk & Bristol such sum per year as should thereafter be agreed upon, or if the parties failed to agree such sum as should be arrived at by arbitration. This was an informal oral understanding contemplating a subsequent incorporation into a written agreement when the parties had arrived at a settlement as to all the terms.

Pursuant to this understanding Mr. Perry and Mr. Cavanaugh have exercised the duties of superintendent and manager of the Norwood, Canton, & Sharon since January, 1913. Mr. Perry has had charge of the employees of the Norwood, Canton, & Sharon, has kept account of their time, paid them, has supervised the conduct of transportation, maintenance, and equipment. Mr. Cavanaugh has acted as manager, has kept books, certified bills, and has done the general acts of manager. So far, no payment has been made to the Norfolk & Bristol for these services, and no bills have been rendered therefor. It remains for the parties to arrive at an agreement as to what is a reasonable price to be paid for these services, and then the Norfolk & Bristol will charge the Norwood, Canton, & Sharon for them. This is really a source of income which is used to reduce the management expenses of the Norfolk & Bristol.

Over the same period of time the Norfolk & Bristol has sold supplies to the Norwood, Canton, & Sharon, and has furnished it with cars in emergencies. All of the equipment rented and all supplies furnished have been charged for at definite rates and an itemized bill rendered each month which has been paid in due course by the Norwood, Canton, & Sharon. The total amount of the bills rendered from 1913 have been as follows:

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January 1, 1913, to December 31, 1913, $518.74; January 1, 1914, to December 31, 1914, $842.68.

This arrangement is novel in its provisions. The statutes provide, in the case of connecting street railway companies, that they "may contract that either company shall perform all the transportation upon and over the whole or any part of the railway of the other," but the terms of the contract must be approved by this Commission before it can be valid or binding. (Stat. 1906, chap. 463, pt. 3, § 55.) They also provide that one company may permit another "to operate cars over its tracks to such extent and under such rules and regulations" as this Commission shall determine to be "consistent with public safety" (Id. § 36). But this arrangement does not fall in either category. Under it the Norwood, Canton, & Sharon has for two and one-half years been managed by the officers of the Norfolk & Bristol, and is in debt to the latter company for the services rendered. In reality, therefore, the operating expenses of the Norwood, Canton, & Sharon and the income of the Norfolk & Bristol have both been understated during this period by the amount of the reasonable compensation for these services. The salaries of Mr. Cavanaugh and Mr. Perry aggregate $6,000. Prorated on the basis of gross earnings, the share of the Norwood, Canton, & Sharon would be about $660 a year. The records show, also, that the Norfolk & Bristol charges the Norwood, Canton, & Sharon at the rate of 1.5 cents per car mile for rent of equipment, while it actually costs the Norfolk & Bristol at least 2.8 cents per car mile for maintenance of equipment. The amount involved however, is trifling.

While the matter is not of large consequence from the money point of view, the transactions between the companies have undoubtedly been carelessly handled. There was, we feel, no good reason for the failure to adjust relations on a cash basis from the start. It surely was not good business, in view of the financial status of the Norwood, Canton, & Sharon, to allow matters to drift for so long a time without any adjustment at all. It is clearly incumbent on both companies to reach a speedy agreement, to settle past accounts, and to adjust their relations on a definite cash basis for the future, so that the true operating expenses, on the one hand, and the true income, on the other, may appear. Any such contract should, in our judgment, be in writing, and

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should be filed with the Commission. Notice to that effect will be given by the Commission to the operating companies in the commonwealth.

[3] (2) *Relations with the East Taunton Street Railway Company.*—It also appears that there are numerous intercompany transactions between the Norfolk & Bristol and the East Taunton Street Railway Company, a small company operating about 11½ miles of track, of which the general manager of the Norfolk & Bristol (M. A. Cavanaugh) is president. In that capacity he receives a salary of $400 a year, but states that he gives little time to the work. From time to time equipment is rented and supplies sold to the East Taunton by the Norfolk & Bristol, for which monthly accounts are supposed to be rendered. These transactions, also, have been handled carelessly. They are not recorded in the books, except in the cash book when payments are made by the East Taunton company. Under such a system it would be strange if errors did not frequently occur; and there is, indeed, evidence that the Norfolk & Bristol has not always been properly reimbursed for the supplies which it has furnished (see report of the chief accountant of the Commission dated August 3, 1915, and made a part of the record of the case). The Commission recommends that all charges against the East Taunton company or the Norwood, Canton, & Sharon company, or any other company, be entered in explicit form in the journal, and posted to a ledger account. The interrelations of ownership and management of these companies are such as to demand that accurate and proper methods of accounting be employed for all intercompany transactions.

[4] (3) *The Salary of the General Manager.*—At the public hearing some comment was made in regard to a charge of $9,600 to profit and loss in 1913, representing an adjustment of back salary of the general manager. The company's explanation is as follows:

"Mr. Cavanaugh took charge of the road in 1904, but the amount of his salary was not determined. During the first four years he received two thousand dollars ($2,000) per year, and during the next four years he received thirty-six hundred dollars ($3,600) per year. In 1912 it was agreed that his salary should be four thousand dollars ($4,000), and the difference between

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that amount and what he had already received was made up by the payment of nine thousand six hundred dollars ($9,600), which appears in the accounts of 1913. This was charged to profit and loss as a proper deduction from that part of the surplus which represented accumulated earnings."

In view of the size of the company and its low earnings, this payment may be open to criticism, but inasmuch as it was made out of surplus funds, it has no direct bearing upon the present need for additional earnings. Criticism was also made of the size of the salary. It is undoubtedly somewhat large, as salaries in such small companies go.

[5] (4) *Automobile Expenses.*—The company owns one three-ton motor truck, one Carhartt runabout, one Carhartt five-passenger touring car, and one Pierce-Arrow seven-passenger touring car, costing respectively $1,525, $1,120, $2,300 and $1,506. Part of these costs were charged to new equipment and part to operating expense. The total charge for maintenance of the company's automobiles, including insurance, was $1,604.80 in 1914 and $2,262.49 in 1915. Both touring cars are kept, we are informed, at 162 Harrishof street, Boston, the residence of Mr. Cavanaugh.

It is apparent that the company is overloaded with unnecessary automobile equipment. Automobile depreciation is very rapid, and maintenance charges are so large that the number of automobiles purchased should be carefully restricted to the needs of the service. The purchase and use of automobiles by the officials of most well-managed municipalities are surrounded with salutary restrictions. A similar standard in the interest of the economical management of their properties must be required of public service companies. Judged by the needs of the service and the practice of other companies, the motor truck and the runabout kept on the company's premises at Foxborough are sufficient for all legitimate requirements of the Norfolk & Bristol company. If the company's automobile equipment were confined to these cars it would result in an annual saving in maintenance and depreciation charges of not less than $1,500 to $2,000.

[6] (5) *The Company's Accounting Methods.*—Notwithstanding the facts that a majority of the entries in the company's

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books are correctly made, there is evidence of carelessness and lack of knowledge of the classification prescribed for street railway accounts. Certain payments have been made without vouchers, and some of the vouchers are so lacking in explicit information as to be of little value. Specific instances are given in the report (above mentioned) of the chief accountant. The company's accounts for the year ended June 30, 1915, also show thirteen monthly payments to the general manager, instead of twelve. As there does not appear to be a lap-over from the previous year, the last monthly payment obviously belongs to the year beginning July 1, 1915. By reference to the last annual return submitted, it appears, also, that the company neglected to report the number of automobiles owned, although it mentioned the auto truck. All automobiles should be entered in the returns under miscellaneous equipment.

The chief accountant has made an analysis of the company's returns for 1914 and 1915, and has found a large number of cases where distributions have been incorrectly made as between property charges and operating expense, and also between the different subdivisions of operating expense. These errors of distribution need not be described in detail, as they are explained in his report, which, as already stated, is a part of the public record of the case. Specific mention, however, should be made of the fact that the entire salary of the general manager, and a portion of the salary of the superintendent, has been charged to maintenance. The salaries of these two officials should clearly be charged to general and miscellaneous expense, in accordance with the uniform system of accounts for electric railways prescribed by the Interstate Commerce Commission. The company's allocations of these salaries to maintenance has, to that extent, swollen the amount properly chargeable to the maintenance account. The following table, prepared by the chief accountant, shows the company's returns for 1914 and 1915 as compared with the corrected amounts under each subdivision of the classification:—

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Comparative Income Statement of the Norfolk & Bristol Street Railway Company for the Years 1914 and 1915, Showing the Operating Accounts as Distributed by the Company Compared with a Distribution as Per the Classification Effective July 1, 1914.

	1914 As per Returns of Company.	1914 As per Classification July 1.	1915 As per Figures Submitted by Company.	1915 As per Classification Effective July 1, 1914.
Gross operating revenue .	$93,978.31	$93,978.31	$88,435.10	$88,435.10
Operating Expenses.				
Way and Structures:				
Superintendence	4,000.00		468.00	
Maintenance of way ...	6,077.65	6,067.50	4,355.26	4,247.16
Maintenance of electric lines	1,870.19	1,870.19	1,740.85	1,740.85
Buildings and structures	257.98	257.98	362.65	362.65
Total maintenance of way and structures	12,205.82	8,195.67	6,926.76	6,350.66
Equipment:				
Superintendence	1,890.78		348.00	
Maintenance of power equipment	542.77			
Maintenance of cars and locomotives	6,404.49	4,334.49	4,113.95	4,113.95
Maintenance of electric equipment	6,100.91	6,100.91	3,818.85	3,818.85
Miscellaneous equipment expenses	1,410.87	200.79	2,396.47	
Depreciation		2,070.00	2,167.49	2,167.49
Total maintenance of equipment	16,349.82	12,706.19	12,844.76	10,100.29
Power:				
Maintenance of power equipment		542.77		156.66
Power plant employees	4,080.80	3,756.80	3,760.84	3,436.84
Fuel for power	11,352.05	11,352.05	9,786.06	10,092.15
Other power supplies and expenses	138.59	138.59		111.92
Power purchased	381.40	381.40		642.87
Total power expenses	15,952.84	16,171.61	13,546.90	14,440.44
Transportation:				
Superintendence			468.00	
Conductors and motormen	22,398.71	22,398.71	21,109.94	21,109.94
Miscellaneous expenses .	4,708.34	3,419.34	4,150.02	4,362.10
Total transportation expenses	27,107.65	25,818.05	25,727.96	25,472.04

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Comparative Income Statement of the Norfolk & Bristol Street Railway Company for the Years 1914 and 1915, Showing the Operating Accounts as Distributed by the Company Compared with a Distribution as Per the Classification Effective July 1, 1914.—*Continued.*

	1914 As per Returns of Company.	1914 As per Classification July 1.	1915 As per Figures Submitted by Company.	1915 As per Classification Effective July 1, 1914.
General and miscellaneous:				
General expenses	2,458.48	8,181.96	8,170.97	8,524.72
Injuries and damages .	1,054.49	1,054.49	2,299.85	2,299.85
Insurance	3,414.23	1,185.00	1,185.01	1,185.01
Store, garage and stable expense		1,494.10		2,138.74
Rent of tracks and terminals	704.73	704.73	1,102.13	459.26
Total general expenses	7,631.93	12,620.28	12,757.96	14,607.58
Total operating expenses	79,247.46	75,511.80	71,804.34	70,971.01
Net operating revenue	14,730.85	18,466.51	16,630.76	17,464.09
Miscellaneous income:				
Interest on deposits ...	269.51	269.51	116.17	116.17
Interest on bonds in sinking fund			200.00	200.00
Total miscellaneous income	269.51	269.51	316.17	316.17
Gross income less operating expenses	15,000.36	18,736.02	16,946.93	17,780.26
Deductions from income:				
Taxes on real and personal property	1,045.43	1,045.43		
Taxes on earnings	1,969.34	1,969.34	3,068.44	3,068.44
Miscellaneous	49.67	49.67		
Interest on funded debt	10,000.00	10,000.00	10,000.00	10,000.00
Total deductions	13,064.44	13,064.44	13,068.44	13,068.44
Net divisible income	1,935.92	5,671.58	3,878.49	4,711.82
Gross operating revenue .	93,978.31	93,978.31	88,435.10	88,435.10
Operating expenses :....	79,247.46	75,511.80	71,804.34	70,971.01
Percentage of operating expenses to operating revenue	84.32	80.35	81.19	80.25
Maintenance of way	12,205.82	8,195.67	6,926.76	6,350.66
Maintenance of equipment	16,349.82	12,706.19	12,844.76	10,100.29
	$28,555.64	$20,901.86	$19,771.52	$16,450.95
Per cent of gross revenue	30.38	22.24	22.36	18.60

[7] Other criticisms of the accounting methods have been made by the chief accountant. It is evident that the books, in their present form, are unsuited to show the operating accounts as they appear in the classification adopted by the Commission as of July 1, 1914; and it is recommended that a new set of books be opened by a competent auditor which will contain all the accounts necessary to furnish correctly the information now required in the annual return. Vouchers should also, in the future,

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be issued for all payments, should be in sufficient detail to explain the transactions involved, and should be approved by the superintendent or the treasurer of the company before payment is made.

[8] The present bookkeeper of the company receives a salary of $10 a week, and an additional sum of about $90 has been paid during the year 1915 for services in connection with the keeping of the books. For an additional expenditure of three or four hundred dollars a year the services of a bookkeeper who could properly handle the accounts of this small company could easily be obtained. The employment of a competent bookkeeper would make possible various economies which would more than offset the additional expenditure required. The Commission recommends that such an appointment be made as soon as practicable, and that all the company's current books of account be kept on its premises at Foxborough. A correct method of accounting by public service companies is a fundamental requirement for proper public regulation, especially where, as in this commonwealth, the investment rather than the reproduction cost is taken as the controlling basis for fixing rates.

[9–13] (6) *Maintenance Expense.*—It was urged that the maintenance charges of the company have been abnormally high during the past few years, especially in 1914, and that they are likely to decrease, thus leaving a larger margin available for dividends. The returns of the company for the thirteen years from 1902 to 1914, inclusive, and advance figures furnished by the company for the 1915 year, show the following expenditures for maintenance of way and structures and maintenance of equipment, stated in dollars and in percentage of operating revenue:—

Table D.

Year.	Maintenance of way and Structures.	Maintenance of Equipment.	Total.	Per Cent.
1902	$ 2,190.72	$ 3,655.45	$ 5,846.17	14.82
1903	2,723.47	4,804.74	7,528.21	13.76
1904	3,955.29	11,159.22	15,114.51	30.02
1905	14,287.89	9,951.66	24,239.55	43.50
1906	13,902.81	11,442.32	25,345.13	37.20
1907	7,256.42	6,701.20	13,957.62	20.22
1908	3,212.08	2,796.22	6,008.30	8.51
1909	4,156.09	7,543.98	11,700.07	15.56
1910 (9 mos.)	3,551.13	8,782.51	12,333.64	21.68
1911	10,618.69	10,674.22	21,292.91	23.26
1912	11,883.09	14,922.75	26,805.84	28.70
1913	10,894.68	15,635.50	26,530.18	27.63
1914	12,205.82	16,349.82	28,555.64	30.38
1915	6,926.76	12,844.76	19,771.52	22.36
Averages	7,697.49	9,804.60	17,502.09	24.43

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It appears from table C, given above, that the company's reports for the years 1914 and 1915, as corrected by the chief accountant of the Commission, would show a total maintenance expense for 1914 of $20,901.86, instead of $28,355.64, and for 1915, $16,450.95, instead of $19,771.52, as reported by the company. While it has been impracticable to make a similar detailed investigation of the company's accounts for previous years, there can be no question that many of the amounts and percentages which appear above in table D do not reflect true maintenance, as they include expenditures which should have been otherwise classified.

Twenty per cent of operating revenues is sometimes taken as a rough estimate of the proportion necessary to cover maintenance of way, structures, and equipment and depreciation under average conditions. (See the discussion of this question in the Blue Hill Case decided by the Commission July 31, 1915.) Upon this assumption it would seem that if the returns of the Norfolk & Bristol were correct, it had made adequate provision for this purpose. The company's returns, however, for the reasons above stated, cannot be considered a trustworthy guide in this respect. Moreover, this test applies only to that form of depreciation which arises from wear and tear, and is at best rough and inaccurate. It is particularly questionable when applied to a small road with relatively low gross earnings.

The company had accumulated no depreciation reserve, as such, until 1915, when the sum of $2,167.49 was charged to that account. The returns, however, indicate that the company since the date of the last bond issue [December 15, 1909] has made additions and improvements to its property, costing $30,009 out of surplus earnings. This amount, as well as the smaller amount charged by the company to the maintenance account, but representing in fact additions and improvements, is really equivalent to a depreciation reserve fund so long as it remains uncapitalized; and the same is true of the sinking fund, amounting to $6,489.52, which has been set aside for the payment of the outstanding bonds, and which must be increased at the rate of $2,000 per year until the date of their maturity, in 1928. The report of the engineer of the Commission, already referred to, estimated the

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depreciation as of June 1, 1915, at $165,782.64, divided as follows:—

Railway	$ 88,566.37
Equipment	27,370.00
Land, buildings, etc.	49,846.27
	$165,782.64

This is an outside estimate based on observation of the property. A deduction of this amount from $449,837.30, the engineer's estimate of total cost, would make the depreciated value $284,054.66. As compared with the capitalization of $400,000, the total depreciation on this basis amounts to $115,945.34, and this amount is partially offset by the sinking fund of $6,489.52 and the depreciation reserve of $2,167.49, already referred to. Despite the fact, therefore, that the company, out of its total net earnings, has paid out only $6,000 in dividends to its stockholders, and has apparently turned back over $30,000 into the property, it appears that the property may have depreciated in value to the amount of nearly $110,000 as compared with the investment of $400,000.

The accumulation of a depreciation reserve or surplus fund equal to the entire amount of the estimated depreciation is perhaps more than good business policy necessarily requires; but the evidence demonstrates, we think, that while the Norfolk & Bristol has made some provision for depreciation, it has not made due provision.

The inspection department of the Commission reports that the track, rolling stock, and power equipment are in fair condition. The power station, it appears, is not only well designed but very well maintained. The following is an extract from a report of that department in regard to track conditions, which has been made a part of the record of the case:

"The track was originally built in 1898 and is in fair condition generally. The records of the company in regard to the renewals of ties, poles, etc., are very incomplete, but it would appear that about one half of the original poles are still standing, and it seems probable that a very large proportion of the original ties are still in the ground. Practically no rails and only a small proportion of the trolley wire have been renewed. Some parts of the road-bed need new ballast."

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The department estimates about $14,000 as the average expenditure which should henceforth be made each year for several years to come "in order to maintain tracks and overhead structures in a safe and proper condition."

The average expenditure of the company for maintenance and depreciation of equipment during the past two years has been about $11,000. We are of the opinion that an annual expenditure of not less than that amount is necessary in the future in order to maintain the equipment in good operating condition. It may be assumed, therefore, that the company should hereafter expend about $14,000 a year for maintenance of way and structures, and about $11,000 for maintenance and depreciation of equipment, which would represent a total maintenance expense of $25,000 a year. The importance of proper expenditures for maintenance and due provision for depreciation cannot be too strongly emphasized. As the Commission said in the Middlesex & Boston Rate Case, 2 Mass. P. S. C. R. p. 134 [1914]: "Depreciation is as much an operating charge as are the wages of motormen. If ignored, financial ruin is certain to result."

The corrected returns of the company for 1914 and 1915, given above in table C, show for the year of 1914 a surplus of $5,671.58 after the payment of maintenance charges to the amount of $20,901.86, and for the year 1915 a surplus of $4,711.82 after the payment of maintenance and depreciation charges to the amount of $16,450.95. It appears, therefore, that if the company had expended $25,000 a year for maintenance and depreciation during the past two years it would have shown a deficit for that period of $2,263.79, or $1,131.89 a year.

In order to make up this deficiency and to permit of a 6 per cent return to its stockholders, the company must show an increase of more than $13,000 over its average net earnings for the past two years. If it be assumed that a reduction of the company's automobile expenses and a proper adjustment of its relations with the Norwood, Canton, & Sharon Street Railway Company, together with other possible economies of operation, would effect a saving of about $2,500 a year, the company would appear on this basis to be entitled to an additional revenue of something over $10,000 a year.

It was urged at the hearing that the company is suffering at

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the present time from the effects of a period of financial depression, and that the exigencies of a temporary situation at this time ought not to be regarded as a reason for permanent increase in rates. There is some force in the contention. In its report on "Transportation in the Metropolitan District," made to the general court on April 9, 1915, the Commission said:—

"In the first place, without undertaking to analyze or pass judgment upon the present financial condition of the Boston elevated company, it seems clear that the disturbance in general business conditions which has been prevalent makes present results from the operation of that company an untrustworthy guide as to its underlying financial strength. It would be unwise to base any conclusion as to the need for a revision of fares upon a showing made in a period of general financial depression, and still more unwise to adjust such a revision to the apparent exigencies, if there be any, of a situation which may be temporary only."

Broadly speaking, we hold that the normal earning power of a company, so far as it can be ascertained, should in general be the controlling basis in adjusting rates. Abnormally good earnings in times of special prosperity ought not to be taken as a basis for ordering reductions in rates, nor should abnormally poor earnings in times of financial depression be taken as a basis for confirming increases.

In this case, however, while prevalent financial conditions have no doubt been one reason for the poor showing in 1914 and 1915, the evidence does not indicate that the return to the stockholders, allowing for depreciation and an accumulation of proper surplus funds, would have been adequate if the earnings had been more nearly normal. With a steady increase in population in the territory served, and improving business conditions, and with economies in operation or management, it is possible that the company could in the future earn an adequate return without an increase in rates; but the Commission upon the evidence would not be justified in refusing an increase because of such speculations. The opportunity to reduce rates at any time if earnings prove excessive is, of course, always open.

Upon the evidence, therefore, the Commission finds that the need of additional earnings has been demonstrated.

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The Six Cent Fare.

The company proposes to substitute for the present 5-cent fare a 6-cent regular cash fare, a 5½ cent ticket fare at all hours of the day, and a 5-cent workingmen's ticket fare at specified hours in the morning and evening. It also proposes to change somewhat the present arrangement of fare zones, to restrict present transfer privileges, and to charge 1 cent for every transfer issued.

The company has estimated the additional revenue likely to be derived from these changes at a trifle less than $10,000 per year. The estimate is based on the fares collected in the year ended December 13, 1914, and is made up on the assumption that the changes will not produce a decrease in traffic. There is evidence that this assumption is likely to prove incorrect. Data collected by the Commission show that, where companies have changed from 5 to the 6-cent unit, traffic has usually fallen off. The following table shows the number of revenue passengers carried by such companies in the year before and in the year after the change was made:

	Before.	After.
Blue Hill	1,680,543	1,525,154
Boston & Worcester	11,143,040	10,481,902
Brockton & Plymouth	2,255,320	1,856,723
Concord, Maynard, & Hudson	1,146,088	969,621[1]
Connecticut Valley	3,714,765	3,357,857[2]
Lexington & Boston	2,766,618	2,688,114
Newton & Boston	1,402,385	1,315,947

[1] 5 mos. at 5 cents; 7 months at 6 cents.
[2] 3 mos. at 5 cents; 9 months at 6 cents.

While there may have been other contributing causes in certain of these cases, this table supports the theory that a 6-cent fare decreases traffic.

It is, of course, impossible accurately to forecast the result of a change in fares such as is proposed, but the company's estimate, apart from the question of traffic, seems to have been made up on reasonable assumptions. It has been assumed, for example, that 40 per cent of the passengers carried will use the workingmen's tickets in the morning and evening, and that 25 per cent of the remainder will use the 5½ cent tickets. In view of the facts above stated, the Commission is of the opinion that the change will not result in an increase of earnings in excess of $10,000, and that

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it is, indeed, most unlikely to reach that point. Nor do we feel that such an increase, upon the evidence, is unjust or unreasonable. So far, therefore, as the essential features of the proposed new schedule are concerned, they have the approval of the Commission.

The Restrictions in the Location Grants.

[14] It has already been stated that the original location grants in most, if not all, of the towns in which the road operates, contain clauses restricting the fare to 5 cents for any ride within the limits of the town. The clause in the grant in the town of Walpole (a copy of which has been made a part of the record of the case) reads as follows:

"29. The rate of fare shall not exceed the sum of 5 cents for any distance in one continuous trip within the limits of said town for any passenger."

Counsel for the town of Walpole have asked us to make a definite ruling with respect to the legal force and effect of this provision. The question was fully discussed by the Commission in the Middlesex & Boston Rate Case, 2 Mass. P. S. C. R. pp. 102–105 [1914], and it will suffice to repeat the ruling made in that case:

"The Commission rules as a matter of law that any alleged conditions or limitations as to fares contained in original grants of locations, or growing out of agreements or attempted agreements between municipal authorities and the petitioning railway company or any of its antecedent constituent corporations, are not valid and controlling as against the rate-making power now vested in this Commission by the Public Service act."

The Minor Changes.

While, as above stated, the essential features of the proposed new schedule have the approval of the Commission, the case is not so clear in regard to some of the minor changes which are proposed.

[15] (1) *The Charge for Transfers.*—The company proposes to make a charge of 1 cent for every transfer issued. It does not estimate that the total revenue from this source will exceed $500 per year, and the reason for charge was stated by the superintendent, Mr. Perry, as follows (record, p. 33):

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Q. Will you tell the Commission why you want to charge 1 cent?

A. We want to put a cash value on the transfer and add to the revenue. We find a great many people will take a transfer and not use it. They simply get it because somebody else gets one. A great many times you will see transfers in the street, and often you will find them on the car floors.

Transfer privileges are granted because of the necessity of changing cars at certain points. If the total length of ride which can be secured by the use of such a privilege is no longer than can be secured upon other parts of the system, where cars are routed through, we fail to see justice in charging for the transfer. It would mean that a passenger using such a transfer would be subject to two additional burdens in comparison with a passenger on a through route; first, the necessity of changing cars and second the charge for the transfer. In this case, the two transfer privileges which the company proposes to grant in connection with the East Walpole branch would give a total length of ride of 3.1 miles in one direction and of 4.73 in the other. These distances are about the same as the distances between fare limits on the main line. Under these circumstances we think that the transfer charge is not justified.

[16] (2) *The Sale of Ticket Books.*—The company proposes to sell books of 50 and 100 tickets, good at all hours of the day, at the rate of 5½ cents each. The purpose of these tickets, presumably, is to encourage traffic and give persons residing on the line and using it frequently an advantage over more infrequent users. Under the system proposed, however, this advantage is open only to persons who are in a position to invest, at one time in at least 50 of those tickets. While this is not clearly unreasonable, we feel that it is desirable, as a uniform principle, that special tickets like these should be made available upon payment of a comparatively small sum, and that the company in this case should sell books of 18 tickets for $1 as well as books of 50 tickets for $2.75. It should be said that this change will probably have the effect of increasing the use of these tickets and of reducing to that extent the increase in income expected by the company from the new rates.

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[17] (3) *The Change in Fare Zones and Abolition of Transfer Privileges.*—The company proposes, in the first place, to reduce the number of fare zones on the Wrentham branch from two to one, and to abolish the present transfer privileges between the Mansfield-Foxborough and Foxborough-Walpole town lines and the Wrentham town line, believing that the distance from Foxborough to Wrentham is "not long enough to justify that continuing as a two-fare zone at 6 cents" (record, p. 136). This change, we think, is reasonable. The reduction in the number of zones fairly offsets the loss of transfer privileges.

In the second place, the company proposes to abolish the present fare zone from the Mansfield-Foxborough to the Foxborough-Walpole town line, and also to do away with the present transfer privilege between the Foxborough-Walpole town line and Diamond street, Walpole, on the East Walpole branch. It appears that these changes will have a trifling effect upon the company's revenue, and that they are proposed largely from the point of view of convenience. The necessity for them has not, in the opinion of the Commission, been sufficiently demonstrated. If in the future, the company wishes to make these changes, and believes that it can present to the Commission convincing reasons therefor, the opportunity is, of course, open at any time.

ORDER.

Notice of the Norfolk & Bristol Street Railway Company relative to increase in rates of fares and adjustment of fare limits and transfer privileges.

It appearing that on April 27, 1915, an order was entered suspending until June 1, 1915, the rates and charges stated in the schedule described in said order; and that said rates and charges were further suspended to August 30, 1915, by successive orders dated respectively May 25, 1915, June 28, 1915, and July 29, 1915; and—

It further appearing that a full investigation of the matters and things involved has been had, and that the Commission on the date hereof has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof; it is—

Ordered that the Norfolk & Bristol Street Railway Company

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be hereby notified and required to establish on all its lines, within thirty days of the date hereof, upon not less than five days' notice to the Commission and the general public by filing and posting in a conspicuous manner in its waiting rooms and cars, in the manner prescribed in § 20 of chapter 784 of the Acts of 1913, a schedule readjusting its rates and fare limits for the transportation of passengers in accordance with its petition filed with this Commission on March 12, 1915, and modification thereof filed June 29, 1915 (providing for the issue of certain limited tickets), except in the following particulars:

1. Substitute in lieu of the proposed one hundred-ride ticket book for $5.50, a strip or book of eighteen tickets to be sold for $1, each ticket to be good for one 6-cent cash fare at any time.

2. Continue the existing fare zone between the Walpole-Foxborough town line and the Foxborough-Mansfield town line.

3. Eliminate the proposed charge for transfers.

4. Continue the existing transfer arrangement between the corner of Beach and North streets in the town of Foxborough and the corner of East and Diamond streets in the town of Walpole.

It is—

Further ordered that the Norfolk & Bristol Street Railway Company be and is hereby notified and required to cancel the rates and charges and changes of fare limits, and transfer privileges stated in the schedule specified in said orders of suspension, so far as they are inconsistent with the basis of fares herein prescribed.

It is—

Further ordered that a copy of this order be filed with said schedule at the office of the Commission, and a copy hereof be forthwith served upon the Norfolk & Bristol Street Railway Company.

TEXAS COURT OF CRIMINAL APPEALS.

EX PARTE SULLIVAN.

[No. 3506.]

(— Tex. Crim. Rep. —, 178 S. W. 537.)

Automobiles — Jitneys — License fee — Occupation tax.

1. A license fee of $10 per annum for a 5-passenger jitney requiring

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constant police surveillance, exacted under an ordinance enacted under express charter authority which does not authorize the levying of an occupation tax, is not an occupation tax and is not unreasonable in amount, although a license receipt is headed "City Occupation Tax," where the receipt was issued under a different automobile ordinance on an old blank showing on its face that it was the form used in issuing a liquor tax license.

Automobiles — Jitneys — License ordinance — Who may question validity.

2. An operator of a jitney cannot be heard to complain that a license fee varying from $10 to $30 according to the number of passengers carried in a car is an occupation tax as to the larger fees, where he is in the $10 class, and it does not appear that any jitney within a higher class has ever applied for a license.

Automobiles — Jitneys — Operation under public automobile license.

3. A license to operate a public automobile under an ordinance perscribing regulations prior to the advent of jitneys does not authorize the operation of a jitney under a subsequent ordinance prescribing more stringent regulations for such vehicles and charging a greater license fee, especially where the latter ordinance provides for a refund on the surrender on the unexpired portion of the prior license.

Automobiles — Jitneys — Ordinance — Indemnity insurance.

4. Under a charter giving a city control of its streets, with power to regulate the use thereof by vehicles carrying passengers for hire, and charging it with the duty to enforce its police power to protect the life and property of its inhabitants, it has power to pass an ordinance requiring an operator of a jitney to procure a contract from some insurance corporation indemnifying his liability for injury to persons other than passengers and to property, where a large number of accidents have occurred from the operation of jitneys.

Constitutional law — Jitneys — Class legislation.

5. An ordinance does not unjustly discriminate against an operator of a jitney in requiring him to procure a contract from some insurance corporation indemnifying his liability for accidents, while street car companies and the drivers of ordinary hacks and automobiles are not required to procure such insurance.

Automobiles — Jitneys — Indemnity insurance — Corporation or person.

6. An ordinance requiring an operator of a jitney to procure a contract from some insurance corporation indemnifying his liability for accidents is not unreasonable or oppressive in not permitting him to procure a contract from a person, where it does not appear that there is only one corporation that will issue such a contract, and where the city has had unsatisfactory experience with personal surety bonds.

Automobiles — Jitneys — Operation off of selected route.

7. An ordinance is not unreasonable in prohibiting the operation of a jitney off of, or away from, a selected route and termini, where the operator makes the selection and may apply to the city for a change in the route or termini at any time.

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Automobiles — Jitneys — Number of hours of operation daily.

8. An ordinance is not unreasonable in requiring the operation of a jitney for not less than twelve consecutive hours out of twenty-four, where it is customary for jitneys to operate on an average of fifteen hours a day, and the ordinance excepts Sundays, a reasonable time for meals, and time in case of accidents, breakdowns, or other casualties.

Automobiles — Jitneys — License ordinance — Who may question validity.

9. An operator cannot attack the provisions of an ordinance that an application for a license to operate a jitney over a particular route may be granted as applied for, or in a modified form, or be refused under certain conditions, where he has made no application for a license.

Automobiles — Jitneys — Restricting number operating on street — Monopoly.

10. A license ordinance permitting the refusal of an application for a license to operate a jitney over a particular route is not unlawful or unreasonable, or obnoxious to constitutional or statutory provisions against monopolies, where it would be dangerous or hazardous to public safety if there was no limitation to the number of jitneys operating on a street.

(Davidson, J., dissenting.)

[May 5, 1915.]

APPLICATION by I. W. Sullivan for a writ of habeas corpus and discharge thereunder from custody under a conviction for a violation of an ordinance regulating jitneys; denied.

Appearances: C. E. Farmer and H. D. Payne for appellant; H. C. McCart, Corp. Counsel, of Ft. Worth, for city of Ft. Worth; Marshall Spoonts, Co. Atty., C. R. Bowlin, and S. L. Samuels, and C. C. McDonald, Asst. Atty. Gen., for the State.

Prendergast, P. J., delivered the opinion of the court:

This is an application by Mr. Sullivan for a writ of habeas corpus and discharge thereunder.

He shows that he was convicted in the corporation (city) court of Ft. Worth on a complaint charging that he violated ordinance No. 448 of said city regulating motor busses, commonly, and for convenience herein, called "jitneys," hereinafter copied, in that: (1) He failed to pay the license fee of $10 required for operating said vehicle before doing so, and also; (2) that he so operated it without first procuring an indemnity contract from some solvent insurance company; that he was fined $10 in the corporation court; that he appealed therefrom to the county court where he was again fined $10, from which no appeals lies. He was held in

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custody by the sheriff, under a proper commitment under said conviction. He attacks said ordinance as unconstitutional and void for many reasons. The application is before us on agreed facts. In order to properly discuss the material questions, it will be necessary to state, more or less, the charter provisions of the city, the ordinance attacked, and others bearing on the subject, and the agreed facts.

The charter of the city of Ft. Worth is a special act of the legislature, approved and in effect March 10, 1909 (Special Laws, p. 227), and was incorporated as a city of more than 10,000 inhabitants, with the commission form of government. It was stated and agreed orally, when the case was submitted, that the city now has a population of about 100,000. The act prescribes it shall be taken and held a public law, and requires that all courts shall take judicial knowledge of the contents and provisions thereof. Page 287. The charter says: The governing body of the city shall consist of a board of commissioners, composed of a mayor and five commissioners. Among others, are these charter provisions:

"The Board of Commissioners of said city shall be vested with the power and charged with the duty of making all laws or ordinances not inconsistent with the Constitution of the state, touching every object, matter, and subject within the local government instituted by this act." Page 238.

"The Board of Commissioners shall have the power to pass, amend, or repeal all ordinances, rules, and police regulations not contrary to the laws and Constitution of this state, for the good government, peace, and order of the city and the trade and commerce thereof, that may be necessary or proper to carry into effect the powers vested by this charter in the corporation, the city government or any department or officer thereof; to enforce the observance of all such rules, ordinances, and police regulations, and to punish violations thereof by fines, penalties, and costs; but no fine or penalty shall exceed two hundred dollars ($200)." Page 281.

"Said city of Ft. Worth shall have the power: . . . To enact and enforce ordinances necessary to protect health, life, and property, and to prevent and summarily abate and remove nuisances of all kinds and descriptions, and to preserve and enforce

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the good government, order, and security of said city and of its inhabitants, and have and enjoy general police powers of a city; and the enumeration of other powers elsewhere herein and the specifications of same shall not be regarded as limitations upon the general powers herein conferred upon the city by this section." Page 276.

"The Board of Commissioners shall have power to lay out, establish, open, alter, widen, lower, extend, grade, narrow, care for, pave, supervise, maintain and improve streets, alleys, sidewalks, squares, parks, public places, and bridges, shall have the exclusive power and control over the same, and shall have the power to vacate and close the same; . . . . and to prevent the encumbrance thereof in any manner, and to protect the same from any encroachment or injury, . . . and to abate and punish any obstructions and encroachments thereof. . . . To prevent the encumbering of the streets, alleys, sidewalks, and the public grounds with carriages, wagons, carts, hacks, buggies, or any vehicle whatever." Pages 246, 247.

Section 2, chap. 4, p. 248, provides the Commissioners shall have power, by ordinance or otherwise, to regulate, within the city, the speed of locomotives, trains, street cars, vehicles, and animals; to require street, electric, and steam railway companies to maintain, in good repair, and properly drain that part of the area of the streets occupied by them, and to construct and keep in good repair bridges, crossings, and culverts over and upon all drains or ditches on streets occupied by them; to require such companies to grade and pave and keep in good repair, with the same material with which the remainder of the street is paved, the width of their tracks and between them, their switches and turnouts, and a reasonable distance outside and next to the rails of said tracks, not to exceed 18 inches. Section 8, p. 276, provides:

"The Board of Commissioners shall have power by an assessment of taxes for said purpose or otherwise, to require any street or electric railway company . . . . to bear its reasonable share of the expenses of sprinkling or sweeping such portions of any street or alley as are traversed by its lines. The Board of Commissioners shall have power to compel all street railway companies to supply ample accommodations for the safe and convenient travel of the people on the streets where their tracks may run

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in the vicinity thereof, and to compel said railway companies to furnish ample, safe, comfortable, and convenient cars for transportation of passengers, and to make such other regulations as may by them be deemed necessary for the safety, convenience, and health of the public in the running of street cars."

Section 15, chap. 9, p. 279, gives the city power and authority:

"To provide for license fees, police tax, and surveillance, and generally to regulate hackmen, draymen, omnibus drivers, baggage wagon drivers, and drivers and owners of vehicles of every kind following a public vocation or lending their vehicles for such purpose, and all others pursuing like occupations, with or without vehicles and to prescribe their compensation, and to make it a misdemeanor for any person to attempt to defraud them of any legal charge for services rendered, and to provide and regulate public stands for vehicles and to prohibit the standing of such vehicles or horses at other than such places, and to regulate and provide a police tax, and to license and restrain runners and drummers for railroad vehicles of any kind to hotels, public houses, or any other places whether of like or unlike kind.

Section 19, p. 258, gives the city power to levy one half what the state does on every occupation, etc., and provides: "That nothing herein shall be construed to prevent the city, in the use of its police power, from prescribing license fees or police tax necessary and proper to enable the city to exercise proper police surveillance over all persons, firms, or corporations or calling subject to same."

Under proper power, authority, and duty, in 1908, the city duly passed ordinance No. 65. Its caption in a general way states its objects. It is:

"An Ordinance Providing for the Licensing of Carriages, Hacks, Omnibusses, Automobiles, and Other like Public Vehicles Operated for Hire within the City of Fort Worth, Prescribing the Rate of Charges That Shall Be Made by the Owners or Custodians thereof for the Transportation of Passengers, and Making It the Duty of the Person Conducting or Operating Such Vehicle to Keep the Said Rate of Charges Conspicuously Posted upon or about Such Vehicle, and Providing a Penalty to Charge or Collect Fares in Excess of Said Rate of Charges and Prescribing a Penalty against Any Person Who Shall Fraudulently Ob-

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tain Conveyance on Such Vehicle and Jail or Refuse to Pay therefor.

This ordinance made no mention of street car companies and did not undertake to regulate street cars. On July 11, 1914, the city passed an ordinance, No. 421, and one week later passed another, No. 422, amending and substituting certain sections of 421, the two together, in effect, making one ordinance. The caption of that ordinance is:

"An Ordinance to Regulate the Use of the Public Streets and Highways of the City of Fort Worth by Horses, Mules, Street Cars, Vehicles of All Kinds and Pedestrians, Establishing Regulations as to the Transportation of Merchandise and Other Property over and upon Such Streets and Highways, and for the Movement, Stopping and Standing of Street Cars, Pedestrians, and Vehicles of All Kinds in the Streets, Highways, and Other Public Places, and Repealing All Ordinances and Parts of Ordinances in Conflict herewith and Fixing Penalties for the Violation hereof."

This ordinance is quite comprehensive, undertaking to regulate, and minutely regulating, the use of all such vehicles and persons operating them, and the streets by them, as was necessary and proper under the facts and conditions of things as they then existed in said city, specially naming automobiles as included therein. As we understand, none of the provisions of said ordinances 65 or 421, 422, are attacked by the applicant. On February 15, 1915, the city amended § 1 of said ordinance 65 so that that section was then made to read as follows:

"Section 1. That hereafter all persons operating carriages, hacks, omnibusses, automobiles, or other vehicles within the city of Fort Worth, for the purpose of carrying passengers for hire, shall first obtain a permit from the Board of City Commissioners in writing therefor, stating in such application the name, street address, age of the operator, period of experience of such operator in the operation of public vehicles, the character of business engaged in by such applicant, whether such person is addicted to the use of intoxicating liquors or the use of morphine, cocaine or opium or any other drug calculated to affect the physical strength or mind of the operator, and shall also state whether such applicant is deaf or partially deaf, or is nearsighted, or is laboring

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under any other physical infirmity or afflicted with any disease of any kind, and that said application shall also state whether the said applicant has ever been convicted of any violation of the traffic ordinance of the city of Fort Worth, and shall also state the place of residence of the applicant for a period of at least five years prior to the date of making such application, and the character of business engaged in by such applicant.

"That if the Board of City Commissioners are satisfied with the application, they shall order the assessor and collector, of taxes to issue a permit to the person applying therefor, and such person shall be entitled to said permit or license for the period of twelve months upon paying to the assessor and collector of taxes the amount of three ($3.00) dollars for each carriage, hack, omnibus, automobile, or other vehicle used by him; provided, however, that said Board of City Commissioners shall in no event be compelled to order the issuance of any license within less than ten days after the presentation of the application therefor to said Board; provided, it shall not be lawful to operate, under the license hereinabove provided for, any motor bus, as the same is defined in ordinance No. 448, passed by the Board of City Commissioners of the city of Fort Worth on the 15th day of February, A. D. 1915."

While this is § 1 of ordinance 65, we understand that it was intended to apply and does apply, to all persons or drivers of all motor busses or "jitneys," as well as to all the other vehicles mentioned. We do not understand that the applicant in any way attacks said amended § 1. The other provisions of said ordinance 65 and of ordinances 421, 422, are numerous and quite lengthy. We deem it unnecessary to here quote any of them. They in no way require the street car companies to take out any license or insurance whatever to run and operate street cars; nor do they require the operators of any of the other vehicles to procure any insurance or indemnity as a prerequisite to operating any such vehicle. They are silent as to these matters.

Thus matters stood until the advent of the "jitneys," which occurred in January, 1915. Their advent and operation created a state of fact entirely different from what had existed theretofore. This necessitated, as the city deemed it, the passage of an ordinance to specially regulate them, which resulted in the passage

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of ordinance 448 on February 15, 1915. We now copy the caption and said ordinance 448 and the agreed facts pertaining thereto:

"Ordinance 448. An Ordinance Defining a 'Motor Bus,'" providing that it shall be necessary to take out a special license for the operation of the same and the provisions under which a special license may be issued; regulating the running of motor busses within the city limits of the city of Ft. Worth; providing a penalty for the unlawful operation thereof, and declaring the unrestricted operation of said motor busses to be a nuisance and unlawful.

"Section 1. Unless it appears from the context that a different meaning is intended, the following words shall have the meaning attached to them by this section:.

"(a) The word 'street' shall mean and include any street, alley, avenue, lane, public place, or highway, within the city limits of the city of Fort Worth.

"(b) The words 'motor bus' shall mean and include any automobile, automobile truck, or truckless motor vehicle engaged in the business of carrying passengers for hire within the city limits of the city of Ft. Worth, which is held out or announced by signs, voice, writing, device, or advertisement to operate or run, or which is intended to be operated or run, over a particular street or route or to any particular or designated point, or between particular points, or to or within any designated territory, district or zone.

"(c) The word 'person' shall include both singular and plural, and shall mean and embrace any person, firm, corporation, association, partnership or society.

"Sec. 2. No person shall run or operate or cause to be run or operated a motor bus within the city limits of the city of Ft. Worth without first obtaining a license therefor; and no license certificate shall be issued until and unless the person so desiring to operate such motor bus shall file with the city secretary of the city of Ft. Worth an application in writing for a license; which said application shall state:

"(a) The type of motor car to be used as such motor bus.

"(b) The horse power thereof.

"(c) The factory number thereof.

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"(d) The county license number thereof.

"(e) The seating capacity thereof, according to its trade rating. If the motor car has been adopted for use as a bus, either by converting a freight carrying truck into a passenger carrying vehicle, or by reconstruction modifying or adding to the body or seating arrangements of a passenger carrying motor car, a statement of its seating capacity shall be added.

"(f) The name and age of each of the persons to be in immediate charge thereof as driver.

"(g) The termini between which each motor bus is to be operated and the street or streets over which such motor bus is to be run, both going and returning.

"The city secretary of Ft. Worth shall refer such application to the Board of City Commissioners of the city of Ft. Worth, at its next regular meeting, occurring not less than thirty-six hours after such filing, together with the recommendations thereon. The Commission may grant such application for license as filed, or grant the same in modified form, or if any such person designated in subdivision (f) of this section be not qualified as to age, experience, or otherwise, to be in the opinion of the Commissioners an unfit person to operate such motor bus, or if the motor car described in the operation of the particular motor bus or motor busses over the route designated by reason of existing traffic conditions would be dangerous or hazardous to public safety, or if said application be not in compliance with the provisions of this ordinance, the Board of Commissioners may refuse same.

"Upon the granting of such application as filed or modified, and the payment of the required license fee, and the filing with him of the indemnity contract herein provided for, properly approved by the Commissioner of Fire and Police, the city assessor and collector shall issue a certificate of license to operate, or cause to be operated the motor bus described, between the termini stated, and between no other termini, provided that the termini stated in such certificate may thereafter be altered by order of the Board of City Commissioners of the City of Ft. Worth in its discretion, upon the application of the person holding such license, for which change a fee of 50 cents shall be charged and collected.

"Sec. 3. The license fees herein provided for are fixed as follows:

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"For each motor bus with a seating capacity of five (5) or less persons, including the driver, $10 per year; for each motor bus with a seating capacity of seven (7) or less but more than five (5) persons, including the driver, $20 per year; for each motor bus capable of seating more than seven (7) persons, including the driver, $30 per year.

"Sec. 4. The license herein provided for shall be good and in force and effect only for the calendar year in which same are issued. If a license be issued covering a period of less than one-half calender year then the fee for same shall be only half the fee provided herein. License for succeeding years shall be procured and license fees paid before expiration of current year, but the owners of all auto busses now being operated shall have ten days after the taking effect of the ordinance to procure license and indemnity contract as hereinafter provided, and to comply with the further provisions of this ordinance.

"Sec. 5. It shall be unlawful.

"(a) To drive or operate or cause to be driven or operated any motor bus upon or along any street unless there is in force and effect a valid license as prescribed in this ordinance for the operation of such motor bus.

"(b) To stop any motor bus, or to permit such motor bus to remain standing upon any street for the purpose of loading or unloading passengers, except same be brought as near as possible to the right-hand curb of said street.

"(c) To drive or operate motor bus without the city license number thereof displayed in figures not less than 3 inches in height permanently painted or attached to the body or appurtenances of the body on both the front and rear of said motor bus, and on the rear painted the word 'bus.'

"(d) To drive or operate any motor bus without having permanently displayed upon same and permanently attached to same a sign or painting showing both the destination and the route of same in accordance with the provisions of the license covering same.

"(e) To drive or operate any motor bus while any person is standing or sitting upon any running board or fender thereof, or while any person is riding on such motor bus outside the body thereof. It shall also be unlawful for any person to stand or sit

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upon any fender or running board of any motor bus, or occupy any portion of such motor bus outside the body thereof while such motor bus is in operation; or for more than one passenger to ride in the front seat.

"(f) To drive or operate a motor bus upon any street in the city of Ft. Worth unless and until the owner thereof or the person in whose name the license or permit is sought or issued shall have procured and deposited with the city assessor and collector of the city of Ft. Worth, with receipt showing premium on same to have been paid, a liability contract written by some solvent insurance corporation incorporated under the laws of the state of Texas, or with permit to do business in this state, agreeing to indemnify the legal liability of said owner or licensee of said motor bus on account of personal injury, in the sum of five thousand dollars ($5,000) to any one person, other than a passenger on said motor bus, and ten thousand ($10,000) dollars for any single accident where more than one person, other than a passenger on said motor bus, is injured or killed, and one thousand ($1,000) dollars on account of property damage to anyone other than a passenger on said motor bus, accruing on account of the operation of said motor bus in any street of the city of Ft. Worth. And in the event said policy of insurance should for any reason be canceled or retired, it shall be unlawful to continue the operation of said motor bus until another such bond shall have been procured and deposited with the city assessor and collector as aforesaid. Before filing of any such insurance contract it shall first be presented to and approved by the Board of City Commissioners of the City of Ft. Worth.

"(g) To fail, refuse, or neglect to operate a motor bus between the termini designated in the license for a period of not less than twelve consecutive hours out of every twenty-four (24) hours, except on Sundays, and a reasonable time for going to and from meals, and in case of accidents, breakdowns, or other casualties, or upon the surrender of said license; or to operate, or permit to be operated, any motor bus off of, or away from, the route stated and fixed in the license for the operation of such bus, except in case of emergency.

"(h) To race with any other auto bus or drive rapidly to pass

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one in order to be first to any prospective passenger or to anyone waiting for motor bus or other conveyance.

"(i) To operate any motor bus at a greater rate of speed than 12 miles per hour in the business section of the city of Ft. Worth or 18 miles per hour in the residence section thereof.

"(j) To reconstruct, materially alter, modify, or add to the body or seating arrangements of any motor bus, after the license thereof is issued without first applying for and receiving the consent of the Commission.

"(k) To run any motor bus, with the top up, between sundown and sunup, unless the same is equipped with a light or lights which shall be kept burning so as to well light both the front and rear seats of said bus.

"Sec. 6. In the operation and driving of any motor bus, the same shall be stopped for the loading and discharging of passengers only at the near side of the streets intersecting the street on which the motor bus is being operated, and only on the right-hand side of the street, on which the motor bus is being operated. Said motor bus shall not be stopped in such position as would interfere with the use of the crosswalks crossing such streets, or as to interfere with or access to or from other conveyances in such street.

"Sec. 7. Any person who shall violate any provision of this ordinance shall be guilty of misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding two hundred dollars.

"Sec. 8. In case of the conviction of the owner or operator of any motor bus, of the violation of the terms of this ordinance, it shall be the duty of the Commissioner of Fire and Police to report such conviction to the Board of City Commissioners, together with his recommendation. The Commission shall consider and act upon said recommendation, and may revoke, suspend, or continue in force such license as it may deem proper.

"Sec. 9. Any person holding a license to operate a public automobile in the city of Ft. Worth at the time this ordinance takes effect may surrender the same and shall thereupon be entitled to credit for the value of the unexpired portion thereof, prorated according to the time, in payment of a license fee hereunder. Any person operating a motor bus, as defined herein prior to the introduction of this ordinance, under a public automobile license,

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who shall file an affidavit stating that he has elected to retire from such business because of the adoption of this ordinance, shall be entitled to a refund of the value of his unexpired license prorated according to time; provided, that said affidavit shall be made within fifteen (15) days after this ordinance goes into effect.

"Sec. 10. The holding or adjudication of any section or subdivision of any section of this ordinance to be invalid shall not effect the validity of any other section or subdivision of a section, but all other sections and subdivisions of sections shall be and remain in full force and effect.

"Sec. 11. The operation of any motor bus otherwise than as provided in this ordinance is hereby declared a nuisance and menace to public safety, and unlawful.

"Sec. 12. Each and every day's violation of this ordinance shall constitute a separate offense.

"Sec. 13. All ordinances and parts of ordinances in conflict with this ordinance shall be, and the same are hereby repealed, in so far as in conflict and no further."

"Sec. 15. This ordinance shall be in force and effect, except as herein otherwise provided from and after its passage and publication."

Said agreed facts are as follows:

"(21) It is agreed that there is a street car system in the city of Ft. Worth which carries passengers for a fare of 5 cents, which system is operated under a franchise from the city of Ft. Worth, and said street car system or corporation is not required by ordinance to take out a license for the operation of their cars, and operate their cars over various streets, taking a car from one route to another, at will, changing the sign thereon, but in so doing do not abandon service on any route from which such car is shifted, but keep sufficient cars on such route for the accommodation of the traffic, and run from 5:30 A. M. to 12:40 A. M. continuously each day, including Sundays.

"(22) It is agreed that vehicles under ordinance No. 449 have the use of all streets, have designated stands, and run only on special calls, and are not held out as running over any particular route, and charge a higher rate of fare than the motor bus."

"(24) It is agreed that the copy of the bond, hereto attached and marked 'exhibit E,' is a substantial copy of some bonds ap-

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proved by the city officials; that while the officials have approved the above form of bond, the city does not require any other conditions of the bond than those stated in ordinance No. 448.

"(25) That the premium charged by the insurance companies for the required bond is $60, covering a period of one year.

"(26) It is agreed that there are now licensed and in operation, practically 300 automobiles or motor busses running and operating over the streets of the city of Ft. Worth, and hauling passengers to and from different points for a fare of 5 cents, and are generally known as jitneys or motor busses; that of this 300 jitneys or motor busses some 25 or 30 have complied with ordinance No. 448, which ordinance seeks to regulate the running and operation of said motor vehicles; that the above referred to cars carry signs thereon in conspicuous places advertising to the public that they run over a particular street or particular streets or to and from particular points within the limits of the city of Ft. Worth; that these 300 cars come in and out of the business section of the city of Ft. Worth on each round trip that they make, and each car makes a round trip on an average of each 30 minutes; that in going into the business section of the city these cars all traverse Main or Houston street, the two principal business streets of the city; that on these two streets, which extend between the courthouse and Texas & Pacific depot, are laid two street car tracks in each street; that when automobiles, wagons, or other conveyances are standing along the curb of these streets there only is left sufficient room for one conveyance to pass between the street car and such conveyances standing along the curb; that the running and operation of these jitneys or motor busses has greatly congested the traffic conditions upon said Main and Houston streets and other streets within the city of Ft. Worth; that the congestion occasioned by the operation of these jitneys or motor busses has necessitated the placing of additional traffic policemen at five different places, or street intersections, within the city of Ft. Worth; that in the past sixty or seventy-five days there has been approximately 100 individual accidents, in which these jitneys or motor busses have been concerned, and in which one or more persons have been injured, and some have lost their lives; that traffic conditions arising by reason of the operation of jitney and motor busses have necessitated, and will necessitate, the em-

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ployment by the city of Ft. Worth of several additional motorcycle policemen for the purpose of patrolling the different streets of the city, enforcing an observance of the city regulations by these jitney or motor bus operators; that since the beginning of the operation of these jitney or motor busses and the passage of ordinance No. 448, it has become necessary for the city of Ft. Worth to create the office of permit clerk, and install therein a man for the purpose of issuing permits and keeping proper records thereof; that said permit clerk is paid a salary of $100 per month; that in addition to these expenses the city of Ft. Worth will have to procure proper stationery in issuing the permits, and proper ledgers and journals and account books, the expense of which cannot now be determined; that all extra policemen required by reason of the operation of these jitneys or motor busses and the traffic conditions arising therefrom will cost the city an average of $80 per month for each policeman hired; that said 300 jitneys or motor busses operate an average of fifteen hours each day, and average covering fifteen miles each hour, that all these cars are operated upon the paved streets only.

"(27) It is further agreed that the city of Ft. Worth in the taking and approval of different characters of bond, both in the municipal court and in contracts for public work and bonds in other matters, has had a great deal of trouble with personal bonds; that by reason of unsatisfactory experience with personal surety bonds the city has, for a number of years, been requiring surety company bonds, and for such reasons required surety company bond in ordinance 448; that the bond required by ordinance No. 448 has been made by some 20 or more operators of jitney or motor busses, and a license taken out by said jitney or motor bus cars and their route selected and designated as required by ordinance No. 448.

"(28) It is further agreed that the license receipt or certificate issued to relator herein and attached to the application for the writ of habeas corpus as an exhibit, and being headed at the top, 'Occupation Tax Receipt,' was issued by the city on old blanks which they had on hand, and that the receipts were not printed or prepared expressly for use under ordinance No. 448.

"(29) It is agreed that the Board of Commissioners of the city of Ft. Worth, in view of the traffic conditions hereinbefore refer-

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red to, and the large number of accidents occurring from the operation of said jitneys, deemed that there was an imperative and urgent necessity for the passage and enactment of said ordinance 448.

"(30) It is agreed that under charter power the street railways of the city of Ft. Worth are required to keep their roadbeds in repair between the tracks and for 18 inches on the outside of either rail, and that they are required to pave the street between the rails and 18 inches on the outside of each rail, and that they are subject to be assessed for such paving, and the cost of same made a lien against the road-bed, franchise, etc., of the street railway company, and also a personal liability of the company, and that said street railway company comply with these requirements of the charter and Board of Commissioners at a continual and heavy cost; that there is no ordinance levying a regulation or license tax on the street cars operated by the street railway companies in the city of Ft. Worth in carrying passengers for hire on their said lines of railway in said city of Ft. Worth."

The agreed facts further show that the jitney operated by the applicant had a seating capacity of five persons, including the driver, and under § 3 of said ordinance 448, the amount of his license tax would be $10 per year; that he refused to take out any insurance policy and to pay the $10 license fee, and refused to select his route, and that he ran his jitney for five cents a passenger per trip on any street he desired, and Main street in particular; that he complied with ordinances 421, 422, and had paid $3 for the license tax and procured a license thereunder, which was issued to him on January 14, 1915, and was for one year from that date; that the facts proved on the applicant's trial in both the corporation and county courts showed, beyond question, that he had violated ordinance 448 as alleged in the complaint, if a valid ordinance.

As stated, the applicant attacks the ordinance under which he was convicted and is held, claiming that it is unconstitutional and void for many reasons. We think it unnecessary to take up *seriatim* each of his said grounds of attack. We will take up and discuss the material and vital ones, which will fully determine his rights in the premises.

There can be no doubt that the city, under the charter provi-

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sions above given, not only had the power and authority to enact and enforce proper ordinances prescribing reasonable regulations on the subjects embraced in said ordinances, but that it was its imperative duty to do so. The agreed facts show that from the traffic conditions and large number of accidents from the operation of the jitneys, the Commissioners of the city—"deemed that there was an imperative and urgent necessity for the passage and enactment of said ordinance 448."

In fact, the applicant expressly concedes that under its charter power said city could pass and enforce all reasonable regulations. But he complains that said ordinance, in several particulars, is unreasonable, so much so as to render it void; that it is class legislation, etc. These we will now discuss.

The construction and validity of ordinances of our cities have many times been before, and considered by, this court. One of the most careful, thorough, and exhaustive opinions was rendered in Ex parte Gregory, 20 Tex. App. 210, 54 Am. Rep. 516. That decision has never been questioned or modified, but on the contrary, many times, and down to almost this day, cited and approved. Therein (page 217 of 20 Tex. App.) it is said:

"In the construction of ordinances, in considering the question of their validity, Mr. Dillon says: 'The courts will give them a reasonable construction, and will incline to sustain rather than to overthrow them, and especially is this so where the question depends upon their being reasonable or otherwise. Thus, if by one construction an ordinance will be valid, and by another void, the courts will, if possible, adopt the former.' 1 Dill. Mun. Corp. 3d ed. § 420. 'When the legislature has conferred full and exclusive jurisdiction on a municipal corporation over a certain subject, the acts of the corporation will be supported by every fair intendment and presumption.' Baltimore v. Clunet, 23 Md. 449. 'In view of the inartificial character of town by-laws, they are especially entitled to a reasonable construction.' Whitlock v. West, 26 Conn. 406. 'The strict rules by which the validity of penal statutes are to be tested are not to be applied to the by-laws or ordinances of municipal corporations. It has been well remarked that the by-laws of very few of these corporations could stand such a test. They should receive a reasonable construction, and their terms must not be strictly scrutinized for the purpose of making

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them void.' First Municipality v. Cutting, 4 La. Ann. 335; Merriam v. New Orleans, 14 La. Ann. 318.

"It is provided in our statute that 'in all interpretations the court shall look diligently for the intention of the legislature, keeping in view at all times the old law, the evil, and the remedy.' Rev. Stat. art. 3138, subdiv. 6. And our Penal Code provides that 'every law upon the subject of crime shall be construed according to the plain import of the language in which it is written, without regard to the distinction usually made between the construction of penal laws and laws upon other subjects.' Penal Code, art. 9. It will be perceived from the provisions of our statute above quoted that they are in accord with the rules of construction applicable to ordinances. They contemplate a reasonable construction, that is, a construction which will give effect to the intention of the legislative power enacting the law, and in interpreting the law all reasonable intendments which help to sustain and make the law operative are to be indulged and weighed by the court."

It is further therein, in effect, held (page 218 of 20 Tex. App). It must be presumed that in framing and enacting the ordinance the Commissioners acted with a knowledge of the Constitution, the charter, and decisions, and intended to conform the ordinance to the requirements thereof, so as to make it a valid and effective ordinance. Such being the intention of those who framed and adopted the ordinance, that intention must be respected and considered in its interpretation, and every reasonable intendment must be indulged, in furtherance of the accomplishment of such intention.

The correct doctrine and, in fact, the universal doctrine in this country and in this state is as stated by Judge Henderson in Ex parte Vance, 42 Tex. Crim. Rep. 623, 62 S. W. 569:

"That the courts are not authorized to declare an ordinance unreasonable and void, unless its unreasonableness shall clearly appear. Ex parte Battis, 40 Tex. Crim. Rep. 112, 43 L.R.A. 863, 76 Am. St. Rep. 708, 48 S. W. 513; Thomp. Corp. § 1021; St. Louis v. Weber, 44 Mo. 547."

And as further stated by him in Ex parte Battis, 40 Tex. Crim. Rep. 115, 43 L.R.A. 863, 76 Am. St. Rep. 708, 48 S. W. 514:

"It it held, furthermore, that the courts will be liberal in up-

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holding an ordinance, and if its reasonableness be doubtful, it will not be held void. Ex parte Gregory, supra."

Judge Dillon, in his work on Mun. Corp. vol. 1, § 591, says the presumption is that an ordinance is reasonable. Our supreme court, in Austin v. Austin City Cemetery Asso. 87 Tex. 338, 47 Am. St. Rep. 114, 28 S. W. 528, also says that the presumption is that an ordinance is valid. Judge Dillon further says:

"The person attacking it must assume the burden of affirmatively showing that as applied to him it is unreasonable, unfair, and oppressive."

Our supreme court in said case, supra, says the same thing. These principles are so well settled and of such universal application by all the courts, it is unnecessary to collate the other authorities.

[1, 2] The applicant attacks those provisions of ordinance 448, requiring the prepayment of a license fee of $10 per annum as applied to him, claiming that it is an occupation tax, and not in truth and in fact a license fee. Of course, if it was in reality an occupation tax, it would be illegal and void because said city had no power or authority to prescribe any such occupation tax. We think the agreed facts herein exclude the idea that said amount is levied as an occupation tax, but, on the contrary, establishes clearly that it was what it purports to be, a license fee only. The charter expressly authorized the city to levy such a license fee. The ordinance purports to do that only, and not to levy any occupation tax. The fact that the applicant on January 14, 1915, procured a license receipt, which is headed "City Occupation Tax," is relied upon by him to show, or tend to show, that the said license fee fixed by said ordinance is an occupation tax. That receipt is no evidence on the point, because it was issued under a different ordinance, and a month before ordinance 448 was ever passed. Besides, the agreed facts show that that receipt was issued on old blanks which the city had on hand at that time, and that since said ordinance 448 was passed, it had not prepared or printed such receipts for use under that ordinance. The said receipt further on its face shows that it was the form of blank used by the city in issuing occupation tax license for pursuing the liquor business.

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The question of whether a license fee or tax is in reality not that, but an occupation tax, has been before the courts of this state, and this court, so often and the distinguishing features discussed so fully that it seems useless to again discuss it.

That the ordinance fixes $20 per annum as the license fee for a jitney of seating capacity of over five, and not exceeding seven, passengers, and $30 per annum for over seven, has nothing whatever to do with this case. It does not, in any way, injuriously affect the applicant. He shows he comes within the $10 class only. There is no showing whatever that any jitney within either of the $20 or $30 classes has ever applied, or ever will apply, for a license. It will not do for courts to go out of their way to decide speculative questions, which do not, and cannot, affect the rights of the party and case before them. To do so would be to render *obiter dicta* decisions of the rankest kind. 8 Cyc. 787–789.

The ordinance held valid in the Gregory Case, supra, fixed the license fee at from $2.50 to $12 per annum on the various vehicles. The fee complained of specially in that case was $8 per annum on the old hack. This record expressly shows that the jitney now uses the streets constantly 15 hours each day, making round trips each 30 minutes, at 15 miles average speed per hour, and requires the constant and extra surveillance of the city through its police department, thus requiring infinitely more attention and expense of the city than could possibly have been the case in Galveston in 1886 of the old hack.

The ordinance held valid by this court in Ex parte Denny, 59 Tex. Crim. Rep. 580, 129 S. W. 1115, fixed the license fee at from $5 per annum on the one-horse wagon, cart, or dray to $10 on each automobile and four-wheeled two-horse vehicle. In that ordinance no vehicle constantly run over the streets, but instead, when not actually engaged in hauling, or going for, a load, each was required to stay at a stand designated by the chief of police. The opinion does not give all these facts, but the record therein, which we have examined, does. The rule established by all the authorities on this subject is that the fact that the license fee "results in producing revenue, which may be paid into the treasury for the use of a particular fund, or as a part of the general fund, does not deprive the assessment of the character of a

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The record makes it clear that prior to the advent of the jitney and exclusive of the steam railroad and interurban (which are not under consideration), there had for a long time existed in the city two classes of carriers of passengers for hire, to wit: (1) The street car company; and (2) the old hack or carriage and automobile. There is no necessity for discussing the character of the street car and its operation. It is known that it could not operate on any street without first securing a franchise to do so from the city, and that is shown to have been done here. The street car can run only on the iron rails laid and maintained by it at its own expense. They, of course, cannot run elsewhere. As one of the burdens of its franchise and right to operate its cars, the city compels it to maintain, keep in good repair, and properly drain, all that part of the streets occupied by it at its own expense, and to construct and keep in good repair the bridges, crossings, and culverts over and upon all drains, or ditches, on the streets occupied by it, to grade and pave and keep in good repair with the same material with which the remainder of the street is paved the width of all of its tracks in such street and 18 inches additional on the outside of its rails, and that this is all done at a continual and heavy cost to the street car company. That all other vehicles carrying passengers for hire, other than the jitney can use and have used any or all of the streets, but they have designated stands and run only on special calls, and are not held out as running over any particular route, and charge a higher rate of fare than the jitney, and that this condition of things had existed for years; that the jitney is a class unto itself; that they sprang up and began operations almost in a day in January; that when ordinance 448 was passed there were 300 of them operating in the city; that they carry signs in conspicuous places, advertising to the public that they run over a particular street or streets to and from given points; that they come in and out of the business section of the city on each round trip, each car, jitney, making a round trip on an average of every 30 minutes, and run at a rate of speed averaging 15 miles each hour, and operate an average of 15 hours each day; that in going into the business section they all traverse Main or Houston street, the two principal business streets of the city, which extend from the courthouse to the Texas & Pacific depot; that they operate

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only on paved streets; that on said two main business streets, two street car tracks in each is laid; that when automobiles, wagons, or other conveyances are standing along the curbs of these streets, there is left only sufficient room for one conveyance to pass between the street car and such conveyance; that the running and operation of these jitneys has greatly congested the traffic conditions upon said main business streets; that in 60 or 75 days during their operation approximately 100 individual accidents have occurred in which the jitneys have been concerned and in which one or more persons have been injured and some have lost their lives; that their operations have already necessitated five additional traffic policemen at street crossings, and will necessitate the employment of several additional motorcycle policemen for the purpose of patrolling the different streets and enforcing an observance of the regulations by these jitneys.

It will be seen by all of this, and the whole agreed facts, that the operation of the jitney has brought about a condition of things in said city that has never before existed and had not before been even contemplated. No such condition of things, or anything even approximating it, is shown to have existed in Ft. Worth prior to the advent of the jitney, or occasioned by anything else than the jitney. It is apparent that in the operation of the street cars and all other vehicles in Ft. Worth prior to the advent of the jitney their operation had never called for, nor required the city, in the protection of itself or its inhabitants, as a proper regulation of such carriers to require them, or any of them, to give any indemnity bond, as is now required of the jitneys.

Let us see what the indemnity policy or insurance is which the city requires of the jitney operator. It is, as the ordinance shows, in substance, a policy by some solvent insurance corporation incorporated under the laws of this state, or some foreign corporation with permit to do business in this state, indemnifying the jitney man in the total sum of $10,000 for any single accident where more than one person is injured or killed, $5,000 when only one person is injured or killed, and $1,000 damage done to the property of another. All these provisions for indemnity are where persons and their property other than the passengers of the jitney man are injured or killed. Neither the ordinance nor the policy make him liable for any damage. He would not be, unless

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he was to blame in inflicting the injury. If injury is caused by his negligence or fault, there is no question but what he is liable in law to the injured person for such damage whatever the amount may be. This indemnity contract then inures fully to his own benefit. If he causes such damage he ought to pay it, or be made to pay it. If he is insolvent or irresponsible so that he cannot be made to respond, the more necessity there is for requiring him to provide for indemnity insurance so that the insurance company shall be required to pay it, or else prevent his operating a jitney. In all events, as stated, it inures to his benefit. If he causes such injury or damage, by having such indemnity insurance, he would be indemnified, and the company, and not he, would ultimately have it to pay.

It is the settled law of the state, and been so, since the rendition of the opinion of Judge Stayton in Galveston v. Posnainsky, 62 Tex. 118, page 128, 50 Am. Rep. 517, that when our municipal corporations are given such powers and authority by its charter as was given Ft. Worth by its charter, "the law imposes the duty of faithfully exercising them, and gives an action for misfeasance or neglect in this respect to any person who may be injured by such failure of duty."

And he further says that the weight of authority holding such municipal corporation—"is liable for an injury resulting from its neglect to keep its streets in repair is so overwhelming that we feel constrained to hold the law so to be, and that an action lies for such an injury without its being expressly given by statute." 62 Tex. pages 133, 134.

It is also well settled in our state that where such city expressly or impliedly authorizes or permits anyone to so use or misuse its streets as to negligently cause injury to another, not only is the party who thus causes injury liable, but the city is also liable.

In Taylor v. Dunn, 80 Tex. 652, 667, 668, 16 S. W. 732, 737, Taylor and his associates contracted with the state to build the present capitol building. It was necessary for them to have a railroad in some of the streets of Austin to haul the material to where the building was to be erected, and the city passed an ordinance authorizing them to construct and operate such railroad. Among other provisions, the ordinance required Taylor and associates to execute, and they did, a $10,000 bond to the city.

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conditioned they would at their cost, within ninety days after the completion of the capitol, remove said railroad and all material thereof, and also all rubbish accumulated thereby. Other issues were in the case unnecessary to now mention, but, it seems, Taylor contended the city had no right to require said bond, and because thereof it was void. Chief Justice Stayton said:

"While a municipal corporation cannot legalize a nuisance, it has power to control the use of streets for a lawful purpose, and as it may become liable for the improper use or condition of streets while occupied by persons permitted to use them for a proper, but unusual, purpose which may be attended with inconvenience or even danger, it may require indemnity from such person, on which to rely in case cause of action results against it from such person's act or omission."

In McQuillin on Mun. Ord. § 430, it is said:

"The proposition cannot be denied that organized government has the inherent right to protect health, life, and limb, . . . private property and legitimate use thereof, and provide generally for the safety and welfare of its people. Not only does the right exist, but this obligation is imposed upon those clothed with the sovereign power. This duty is sacred and cannot be evaded, shifted, or bartered away without violating a public trust."

Again, in § 433, he says:

"Crowded urban populations require numerous police regulations which would be unreasonable in rural districts or sparsely populated territory. This difference was quickly recognized, and from the first establishment of local corporations invested with civil government, the local community has been empowered to enact and enforce all sorts of such regulations which restrict, more or less, the liberty of the individual, his personal movements, and the use of his property. These are absolutely essential to life in crowded centers. From the beginning their necessity has been sanctioned by the public authorities, and they have been sustained generally by the courts."

It needs the opinion of no court or judge to make it true, for every one knows it is true, that an automobile jitney is a powerful and dangerous machine, and is especially dangerous, as usually operated in crowded streets. In running, it has no certain track, but is operated so as to dart about hither and thither. The

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agreed facts show, as stated, that at the time said ordinance was passed, 300 of them were operated over two of the principal business streets each way every 30 minutes for 15 hours continuously, at an average speed of 15 miles per hour, and in the 60 to 75 days they had operated 100 accidents in which the jitneys were concerned had occurred, and in which one or more persons were injured and some lost their lives.

The state requires liquor dealers to give bond (Rev. Stat. § 7452), and authorizes anyone "aggrieved," and others, to sue thereon. In Peavy v. Goss, 90 Tex. 89, 37 S. W. 317, the act of the legislature requiring such bond was attacked because the title of the act was, "An Act to Regulate the Sale of Spirituous" Liquors, etc. It mentioned nothing about authorizing or requiring bond. The supreme court held the act perfectly valid, saying:

"The subject-matter of the act is the regulation of the sale of intoxicating liquors. The bond that is required to be given and the remedies upon it which are provided for are matters regulating the traffic, and are germane to the subject of the act, and come strictly within the purview of the title. The statute has but one subject, that of the regulation of the sale of liquors which produce intoxication."

The state, as a matter of regulation, requires ferrymen to get license from commissioners' courts (Rev. Stat. §§ 7024 et seq.) and execute a bond, upon which anyone injured can sue and recover. So, of pawnbrokers, factors, and others.

In the case of the Indianola v. Gulf, W. T. & P. R. Co. 56 Tex. 594, the court sustained the action of said city in requiring the railway company to execute to it a $50,000 bond as liquidated damages, conditioned that the railroad would, within a given time, extend the line of its railway a certain distance beyond the city limits, and held a recovery could be had thereon, if the railroad failed to comply with said condition. The state cites us to many other decisions from other jurisdictions tending to support the action of the city in requiring bonds of persons to exercise certain privileges and franchises upon its streets. As a general proposition, we think, there can be no doubt that the city of Ft. Worth could annex reasonable conditions to the exercise of the privilege or franchise to the jitneys to operate upon its streets.

On this point, as we see it, it resolves itself into whether or

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not the judges of this court can say, as a matter of law, that to require of the jitney man to procure such a bond as a prerequisite to his running his business in the streets of Ft. Worth is so unreasonable and oppressive as a regulation of the business as to render that provision of the ordinance void. We have no knowledge on the subject other than is disclosed by the facts and record in this case, and the knowledge that we are presumed to possess in common with all other men. On the other hand, the city of Ft. Worth and its governing commissioners must have knowledge, and we must presume they have, which we cannot have. They are on the ground, and have for years had observation and experience about such matters, and daily, if not hourly, must see the effects of the operation of the jitney as well as the other common carriers of passengers for hire on its streets. As stated, the agreed facts are that the Board of Commissioners, in view of the traffic conditions, and the large number of accidents occurring from the operation of said jitney, deemed that there was an imperative and urgent necessity for the passage and enforcement of said ordinance 448. From a full consideration of the principles of law applicable, and the facts shown in this case, we cannot say that the city had no power or authority, and that there was no necessity for requiring the said indemnity bond, as a proper regulation of the business, and we cannot pronounce that feature of the ordinance void.

[5] We have had much difficulty in reaching a correct and satisfactory conclusion as to whether or not requiring the jitney operators to procure such bond, and not the other classes of common carriers of passengers for hire in the city, is so unreasonable or such a discrimination as to make this feature of the ordinance void. From our study of the facts and the law applicable, we think it reasonably certain that the record shows three separate and distinct classes of common carriers of passengers for hire in said city (outside of the steam and interurban railways not under consideration), to wit: First, the street car; second, the ordinary hack and automobile; and, third, the jitney. Clearly, the city so regarded them and acted upon such distinction.

In the case of Southwestern Teleg. & Teleph. Co. v. Dallas — Tex. Civ. App. —, 174 S. W. 636, is reported an exhaustive and able opinion by the court of civil appeals at Dallas, through

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Judge Rasbury, an opinion which appeals strongly to us as correct on this subject. In that case the appellant therein attacked an ordinance of the city of Dallas, which, briefly stated, imposed a tax of $2 for each pole of appellant, and specially excepted therefrom any such tax on the poles of the street car company and of another telephone company, the competitor of the appellant therein. The appellant therein claimed that that was class legislation, discriminated against it, and violated the Federal and state Constitutions on the subject. Judge Rasbury states the contention of appellant therein in these words:

"It is next urged by appellant that the provisions of the ordinance are in violation of § 3, art. 1, of our Constitution, because discriminatory, and hence denies to appellant equal protection of the laws, and is in violation of § 1, art. 8, of our Constitution providing for equal and uniform taxation of citizens of the state and in violation of § 1, art. 14, of the Federal Constitution, guarantying to citizens of all the states equal protection of the laws."

We quote, with approval, what he says as follows:

"Class legislation or laws that affect a particular class are not unenforceable for that reason alone. The right of the legislature to classify persons, corporations, or subjects for taxation, regulation, or restriction in the broadest sense is not an open question under either our state or national Constitution, and the right to classify includes the right to exempt, as does the right to exempt include the concurrent right to discriminate. The rule of law in reference to the right of classification in the light of the constitutional provisions urged by appellant in force in this state is, of course, the rule adopted by the Supreme Court of the United States in applying to the state Constitutions and laws that provision of the national Constitution which guarantees to all the citizens of all the states of the United States the equal protection of the laws.

"In the case of Union Cent. L. Ins. Co. v. Chowning, 86 Tex. 654, 24 L.R.A. 504, 26 S. W. 982, the rule in this state with reference to classification was stated as follows: 'When legislation applies to particular bodies or associations, imposing upon them additional liabilities, it is not open to the objection that it denies to them equal protection of the laws, if all persons brought under its influence are treated alike under the same conditions.' P.U.R.1915E.

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The rule cited is from Missouri P. R. Co. v. Mackey, 127 U. S. 209, 32 L. ed. 107, 8 Sup. Ct. Rep. 1161, and is the present existing general rule in this and most, if not all, the other states of the Union, and under the rule nearly every conceivable character of classification, so long as it is reasonable and just, has been sustained. In the same case it is further said, 'If all persons subject to it are treated alike under similar circumstances and conditions in respect both of the privileges conferred and the liabilities imposed,' the constitutional inhibition has no application.

"It is also said in Magoun v. Illinois Trust & Sav. Bank, 170 U. S. 283, 42 L. ed. 1037, 18 Sup. Ct. Rep. 594: 'What satisfies this equality has not been, and probably never can be, precisely defined. Generally it has been said that it "only requires the same means and methods to be applied impartially to all the constituents of a class, so that the law shall operate equally and uniformly upon all persons in similar circumstances"' (citing Kentucky R. Tax Cases, 115 U. S. 321, 29 L. ed. 414, 6 Sup. Ct. Rep. 57).

"It was further said in Magoun's Case, supra, that 'it does not prohibit legislation which is limited, either in the objects to which it is directed or by the territory within which it is to operate. . . . But what is the test of likeness and unlikeness of circumstances and conditions? These expressions have almost the generality of the principle they are used to expound, and yet they are definite steps to precision and usefulness of definition, when connected with the facts of the cases in which they are employed. With these for illustration, it may be safely said that the rule prescribes no rigid equality and permits to the discretion and wisdom of the state a wide latitude as far as interference by this court is concerned.' It is also said in the same case that the rule— 'is not without limitation, of course. "Clear and hostile discriminations against particular persons and classes, especially such as are of unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition."' Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232, 33 L. ed. 892, 10 Sup. Ct. Rep. 533.

"But it was also said, in Brown-Forman Co. v. Kentucky, 217 U. S. 563, 54 L. ed. 883, 30 Sup. Ct. Rep. 578: 'This restriction does not compel the adoption of "an iron rule of equal tax-

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ation," nor prevent variety in methods of taxation or discretion in the selection of subjects, or classification for purposes of taxation of either properties, business, trades, callings, or occupations. This much has been over and over announced by this court.'

"Under the rule stated in the several ways by the citations quoted, what is the position occupied by appellant, and what equal protection of the law has it been denied, and what lack of equality or uniformity is shown by the ordinance as between appellant and similar concerns similarly situated? None we conclude. We do not understand that the rule which permits legislative bodies to classify persons, corporations, trades, businesses, subjects, etc., in order that the burdens of government may be justly and equally borne, denies them the right to classify classes. The rule announced by our supreme court in Union Cent. L. Ins. Co. v. Chowning, supra, comprehends such necessity in the varied and complex situations necessarily arising from the different situations and conditions of those who are to be so charged, when it declares that the test shall be that all of the constituents of the particular class shall be 'treated alike under like conditions.' The rule, as stated in Magoun's Case, also contemplated the classification of classes in the holding that all should be treated 'alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed.' The right to subdivide a given class when such class is existing under dissimilar circumstances and conditions is sustained in Texas Co. v. Stephens, 100 Tex. 628, 103 S. W. 481, where it is said: 'Persons who, in the most general sense, may be regarded as pursuing the same occupation, as for instance, merchants, may thus be divided into classes, and the classes may be taxed in different amounts and according to different standards. Merchants may be divided into wholesalers and retailers, and, if there be reasonable grounds, these may be further divided according to the particular classes of business in which they may engage.'

"An apt illustration of the right to classify classes is found in the case of Pacific Exp. Co. v. Seibert, 142 U. S. 339, 35 L. ed. 1035, 3 Inters. Com. Rep. 810, 12 Sup. Ct. Rep. 250, the issue being the validity of an act of the Missouri legislature imposing a tax upon all express companies carrying on the business of

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transportation on contracts for hire with railroad or steamboat companies, but exempting all other concerns carrying on an express business and owning its own means of transportation, such as steamboat and railroad companies. This act was attacked upon the same grounds that the ordinance in the instant case is attacked. The classification was sustained, the Supreme Court of the United States holding there was a vital and essential distinction between express companies defined by the act and those concerns exempted from the tax, in that railroads paid taxes upon their roadbeds, rolling stock, and other tangible property, and generally upon their franchise, as did steamboat companies, while on the other hand, express companies of the kind defined by the act have no tangible property of consequence, and that the exemption was a just discrimination in order that the burdens of government might be equally borne. Is there then such essential distinction between those exempted by the ordinance here involved and appellant, as justifies the classification? We conclude there is. The ordinance levies the charge of $2 per pole against all persons or corporations occupying the streets of the city therewith, and excepts therefrom all persons or corporations owning and using poles in the operation of street railways and those which, by the terms of their franchise, pay to the city a proportion of their gross receipts. The ordinance, fairly construed, assumes, that other persons and corporations occupy the streets with poles similar to those of appellant. The undisputed facts show, which we have not stated before, that several street railways occupy the streets of the city with their trolley poles, whereon wires are strung, to be used in propelling their cars by electricity; that another telephone company has poles upon the streets similar in all respects to those of appellant and used for the same purpose; that said other telephone company is operating under a franchise by which it pays to the city 4 per cent of its annual gross receipts furnishes free one duct in its underground conduits, and one cross arm on its poles for police and fire alarm purposes, together with 63 free telephones; that appellant does not pay the city a proportion of its earnings, yet its earnings, as indicated by the evidence, is two thirds greater than those of the competing company; that the street railways exempted from said ordinance by the provisions of the city charter (article 10, § 1, cl. D) are

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required by law to pay the cost of paving the streets between their rails and 2 feet outside such rails, and may be required to drain and light streets over which they pass, and to construct and keep in repair bridges and crossings, as well as construct and maintain culverts and drains on streets over which they pass. Charter, art. 2, § 8, cl. 26. These facts indicate the inequality of the contributions to the city for the privileges enjoyed by appellant and those exempted from the provisions thereof, and, in our opinion, sustain the discrimination as lawful, and the finding of the jury that they are reasonable. The matter of the payment of other taxes is, in our opinion, immaterial and beside the issue. Those exempted, as well as appellant, pay an ad valorem tax upon their tangible property, including their franchise, at least such tangible assets are subject to an ad valorem tax, and the presumption is that it has been so subjected. All tax payments on tangible assets thus properly eliminated, since equal, it comes to this: That the constituent class to which appellant belongs is contributing a much less amount for the privilege of using the streets with its poles than are those exempted from the provisions of the ordinance, and, that being true, it follows as matter of course that there has been no arbitrary or unlawful classification."

In the recent case of St. Louis Southwestern R. Co. v. Griffin, — Tex. —, L.R.A. —, 171 S. W. 706, our supreme court, through Chief Justice Brown, quoting from Houston & T. C. R. Co. v. Dallas, 98 Tex. 396, 70 L.R.A. 850, 84 S. W. 648, said:

"The power of the legislature to regulate the use of property and the carrying on of business so as to protect the health, safety, and comfort of citizens is recognized by all of the authorities, and its use is not to be defeated by the mere fact that loss or expense may be imposed upon the owners of the property or business. Northwestern Fertilizing Co. v. Hyde Park, 97 U. S. 659, 24 L. ed. 1036."

In the case of Patsone v. Pennsylvania, 232 U. S. 138, 58 L. ed. 539, 34 Sup. Ct. Rep. 281, it is shown that the state of Pennsylvania, in order to protect its wild game, passed a law making it an offense for a resident unnaturalized alien to own or be possessed of a shotgun or rifle, and also forfeited the gun where such person was shown to own or to be possessed of it. The act was attacked as an unjust discrimination, and deprived the alien of

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his property contrary to the 14th Amendment to the United States Constitution. The United States Supreme Court in that case said:

"Under the 14th Amendment the objection is twofold, unjustifiably depriving the alien of property, and discrimination against such aliens as a class. But the former really depends upon the latter, since it hardly can be disputed that if the lawful object, the protection of wild life (Geer v. Connecticut, 161 U. S. 519, 40 L. ed. 793, 16 Sup. Ct. Rep. 600, warrants the discrimination, the means adopted for making it effective also might be adopted. The possession of rifles and shotguns is not necessary for other purposes not within the statute. It is so peculiarly appropriated to the forbidden use that if such a use may be denied to this class, the possession of the instruments desired chiefly for that end also may be. The prohibition does not extend to weapons such as pistols that may be supposed to be needed occasionally for self-defense. So far, the case is within the principle of Lawton v. Steele, 152 U. S. 133, 38 L. ed. 385, 14 Sup. Ct. Rep. 499. See further New York ex rel. Silz v. Hesterberg, 211 U. S. 31, 53 L. ed. 75, 29 Sup. Ct. Rep. 10; Purity Extract & Tonic Co. v. Lynch, 226 U. S. 192, 57 L. ed. 184, 33 Sup. Ct. Rep. 44.

"The discrimination undoubtedly presents a more difficult question. But we start with the general consideration that a state may classify with reference to the evil to be prevented, and that if the class discriminated against is or reasonably might be considered to define those from whom the evil mainly is to be feared, it properly may be picked out. A lack of abstract symmetry does not matter. The question is a practical one, dependent upon experience. The demand for symmetry ignores the specific difference that experience is supposed to have shown to mark the class. It is not enough to invalidate the law that others may do the same thing and go unpunished, if, as a matter of fact, it is found that the danger is characteristic of the class named. Lindsley v. Natural Carbonic Gas Co. 220 U. S. 61, 80, 81, 55 L. ed. 369, 378, 379, 31 Sup. Ct. Rep. 337, Ann. Cas. 1912C, 160. The state 'may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses.' Central Lumber Co. v. South Dakota, 226 U. S. 157, 160, 57 L. ed. 164, 169, 33 Sup. Ct. Rep. 66, 67; Rosenthal v. New York,

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226 U. S. 260, 270, 57 L. ed. 212, 216, 33 Sup. Ct. Rep. 27, Ann. Cas. 1914B, 71; L'Hote v. New Orleans, 177 U. S. 587, 44 L. ed. 899, 20 Sup. Ct. Rep. 788. See further Louisville & N. R. Co. v. Melton, 218 U. S. 36, 54 L. ed. 921, 47 L.R.A. (N.S.) 84, 30 Sup. Ct. Rep. 676. The question therefore narrows itself to whether this court can say that the legislature of Pennsylvania was not warranted in assuming as its premise for the law that resident unnaturalized aliens were the peculiar source of the evil that it desired to prevent. Barrett v. Indiana, 229 U. S. 26, 29, 57 L. ed. 1050, 1052, 33 Sup. Ct. Rep. 692.

"Obviously the question, so stated, is one of local experience, on which this court ought to be very slow to declare that the state legislature was wrong in its facts. Adams v. Milwaukee, 228 U. S. 572, 583, 57 L. ed. 971, 977, 33 Sup. Ct. Rep. 610. If we might trust popular speech in some states it was right; but it is enough that this court has no such knowledge of local conditions as to be able to say that it was manifestly wrong. See Trageser v. Gray, 73 Md. 250, 9 L.R.A. 780, 25 Am. St. Rep. 587, 20 Atl. 905; Com. v. Hana, 195 Mass. 262, 11 L.R.A.(N.S.) 799, 122 Am. St. Rep. 251, 81 N. E. 149, 11 Ann. Cas. 514."

In our opinion the agreed facts in this case show such a marked distinction between the three characters of passenger carriers for hire and the extent and manner of their use of the streets as to justify the city in requiring the operator of the jitney to give such bond, and in not requiring either of the other classes of carriers to do so, and that we cannot therefore hold this provision of the ordinance void.

[6] In connection with this matter, the applicant contends, in effect, that it is unreasonable and oppressive to require him to take out the indemnity insurance from some company designated by the ordinance, and that instead he should be permitted to give personal sureties if he so desires, and he suggests that there might be but one insurance company which would issue such policy in the whole state. But no such state of fact is shown before us. The reason why the city requires an indemnity by an incorporated company instead of personal sureties is made to appear clearly by the agreed facts to the effect, as shown by subdivision 27 of the agreed facts copied above. It is unnecessary to again copy it here. Nothing in this record is shown which would justify us to

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conclude that said ordinance in the particulars mentioned is unreasonable or oppressive. On the contrary, we are impressed that they are reasonable and proper, especially in view of the agreed facts.

[7, 8] Again, the applicant attacks those provisions, in effect, requiring him to select a given route over which he will run his motor bus, jitney, designating the termini, and requiring him to stick to that route and termini, and prohibiting him from operating elsewhere, and requiring him to run, or cause to be run, his jitney for not less than 12 consecutive hours out of every 24, except on Sundays, and a reasonable time for going to and from meals, and in case of accidents, breakdowns, or other casualties, or upon the surrender of said license. The applicant's able attorneys, as we understood, both in their oral argument and brief herein, admitted and contended that the operators of the jitneys were common carriers. There can be no question of the correctness of this. Then, as common carriers, they subject themselves to all reasonable regulations in the matters mentioned. Being common carriers and subjecting themselves to such regulations, the public unquestionably has rights in the premises. As we understand the ordinance, the city does not undertake to itself fix the route and termini of the jitneys, but, with some restrictions, permits the operators of the jitneys themselves to make such selection. If they are to operate as common carriers, then the public has the right to know when and where they will operate, and to require them to do so with promptness and regularity. It would certainly be unreasonable to the public that, after they have selected and established their route and termini, they could, at any time, abandon that and take up some other. They have no more right to thus shift from time to time and place to place than the street car carriers would have so to do. Suppose, for instance, the street car system operating on regular schedule time, as they are required to do from day to day and within reasonable hours, should for any reason, without necessity, conclude that on one day or all the days of one week they would not run their cars on their lines north and south, but instead run them east and west, or *vice versa*. The public would be so inconvenienced by this as to make such a condition of things intolerable, and as a matter of fact it would not be tolerated. So, with the jitney, they select a certain

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route and termini. Their patrons, the public, adjust themselves to this, and depend upon them to run that route on schedule time within reasonable hours. But the jitneys without necessity conclude that for a given day or for each day of a given week they will not run on that line at all, but run on another and a different one. The disappointment and inconvenience and trouble to the public that had adjusted itself otherwise would be an outrage to such an extent that such condition of things by the jitneys would not, and should not, be tolerated. The ordinance on this subject, it seems to us, instead of being unreasonable, is most reasonable, and permits them at any time to apply to the city for a change in their route or termini, and the ordinance provides that the city, in its discretion, can make such desired change. The agreed facts show that the jitneys now operate an average of 15 hours each day. Surely that they should be required by the ordinance to operate, with the exceptions mentioned, 12 hours, is not unreasonable and violates no law. It seems to us that the ordinance makes every exception in this regard that would be either necessary or proper.

[9, 10] Again, the applicant attacks that subdivision of § 2 of the ordinance following subdivision "g," wherein it is prescribed that the Commissioners may grant the application for license to operate the jitney as applied for, or grant it in modified form, or under certain conditions, decline to grant it at all. As to this, we think the applicant is not in position to attack this provision, for the agreed facts show that he has not been denied any license, and in fact has made no application whatever himself, but refused to do so. Under such circumstances the rule is as stated in Kissinger v. Hay, 52 Tex. Civ. App. 295, 113 S. W. 1008, expressly approved and adopted by this court in Ex parte Wilson, 56 Tex. Crim. Rep. 1, 117 S. W. 1197, that where one has not applied and been refused, he cannot complain. Young v. Colorado, — Tex. Civ. App. —, 174 S. W. 994; 8 Cyc. 787–789. The rule prevails in the United States Supreme Court, to the effect that it will not hear objections to the constitutionality of any law from those who are themselves not affected by such provisions; that in order to require the court to pass upon such questions they must affirmatively show they have been denied rights by reason of it. Southern R. Co. v. King, 217 U. S. 524, 534, 54 L. ed. 868, 871, P.U.R.1915E.

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30 Sup. Ct. Rep. 594; Engel v. O'Malley, 219 U. S. 128, 135, 55 L. ed. 128, 135, 31 Sup. Ct. Rep. 190; Standard Stock Food Co. v. Wright, 225 U. S. 540, 550, 56 L. ed. 1197, 1201, 32 Sup. Ct. Rep. 784; Yazoo & M. Valley R. Co. v. Jackson Vinegar Co. 226 U. S. 217, 219, 57 L. ed. 193, 194, 33 Sup. Ct. Rep. 40; Rosenthal v. New York, 226 U. S. 260, 57 L. ed. 212, 33 Sup. Ct. Rep. 27, Ann. Cas. 1914B, 71; Darnell v. Indiana, 226 U. S. 390, 398, 57 L. ed. 267, 272, 33 Sup. Ct. Rep. 120; Plymouth Coal Co. v. Pennsylvania, 232 U. S. 531, 544, 58 L. ed. 713, 719, 34 Sup. Ct. Rep. 359; Missouri, K. & T. R. Co. v. Cade, 233 U. S. 642, 648, 58 L. ed. 1135, 1137, 34 Sup. Ct. Rep. 678. However, we might state that as we understand by it the city could not, "without rhyme or reason," arbitrarily refuse to issue to the applicant a license under said ordinance if he complied therewith. But, as we understand that provision, the city reserves to itself authority to refuse to issue license to any and every one under certain conditions. For instance, suppose others, including, or even excluding, the applicant, had already applied for and been granted license on certain routes to a large number, and to such a number as that any others on it would be a great menace to public safety. It is shown by the agreed facts that there were 300 of these jitneys constantly running up and down the two main business streets in the city. Say they were equally divided; then there would be 75 on one side of the street running one way and 75 on the other side running in an opposite direction. Under such circumstances, surely the city would have the right to say that such a number, or even a much less number, is sufficient, and to permit a greater number would be too great a menace constantly to life and limb and property. Under such circumstances the city would not only have the discretion to refuse another license, but it would be its imperative duty to absolutely refuse all others on those streets. In any event, this provision of the ordinance, in our judgment, is not unlawful, unreasonable, or void. Fischer v. St. Louis, 194 U. S. 361, 48 L. ed. 1018, 24 Sup. Ct. Rep. 673; Ex parte Broussard, — Tex. Crim. Rep. —, L.R.A. —, 169 S. W. 660, and authorities therein cited; Kissinger v. Hay, supra, and authorities therein cited.

We see nothing in the ordinance that would make it obnoxious

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to our Constitution, or any statutory provision preventing monopolies. It occurs to us that the very reverse of this is true.

As we view the matters, there is no necessity of discussing any other question. Those discussed and decided, we think, dispose of the case.

The applicant, in our opinion, is not entitled to a writ of habeas corpus, nor discharge if one had been granted. It will therefore be ordered by the court that his application be in all things denied, and that he be and is hereby remanded to the custody of the proper officer, or his successor, who held him when this court took jurisdiction and admitted him to bail.

Harper, J.:

I concur in the result reached, and may write my views later.

Davidson, J., dissenting:

There are some questions which ought to be recognized as settled law with reference to municipal corporations: First, that such corporation is of legislative creation; second, that it can only exercise such authority as has been expressly conferred; third, that such authority must be within constitutional limitation; fourth, that its powers are subordinate to general legislation; fifth, that if there be a doubt of its right to exercise authority or power to act, that doubt must be resolved in favor of the grantor and against the grantee; sixth, that its acts and ordinances must be within the grant; and, seventh, its ordinances must be reasonable, fair, and not discriminating. I regard these propositions as axiomatic and need no elaboration, discussion, or citation of authorities. Within these rules the city may control its streets, and regulate their use. It should be understood that a city and its granted powers are predicated upon the basic principle that they are to be used and exercised for the benefit of those who travel or use such streets, and this without discrimination. To this end and for this purpose these streets are laid out and kept in repair. It may be stated also as axiomatic, that the citizen is not made for the street; the street is made for the citizen and his use. The city cannot prohibit such use, but may reasonably regulate it. That the city may regulate the use of the streets ought not to be questioned, but such regulation should be fair and reasonable. Autocratic power does not belong to nor in-

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here in our republican form of government, either in the state, legislative department, or municipal government. Citizens' Sav. & L. Asso. v. Topeka, 20 Wall. 655, 22 L. ed. 455. All power is inherent in the people, not the government, and in delegating authority to the various departments of government our citizenship did not surrender their inherent power, and such as has been delegated may be recalled or modified by amendment to the Constitution, or by the ordination of a new Constitution. The diversification of this delegation of power has been so given as to prevent usurpation of power or embezzlement of authority. The legislature is supreme in law making, and its authority cannot be invaded nor delegated, and it is bounded by constitutional limitations. Cities are subordinate, and must live within the limits of its grant or charter. Police power is but an incident to legislation. Whatever may be the necessity for its exercise, that necessity is limited by impassible barriers. Withdraw the legislative delegated authority, and the police power passes with that withdrawal. The legislature cannot exceed or transfer its delegated authority any more that can the judiciary or executive. While these statements are general and may be regarded as legal platitudes in a sense, still it is well to have frequent recurrence to first principles, "lest we forget," and it may be absolutely necessary to do so that precedents may be kept within the reason of the law and the purpose of the written Constitution. It may be well also to restate that great truth, sometimes overlooked, that the government is made by man and for his benefit, and that man is not made by nor for the government. Recent history—legislative and judicial—does not seem to have kept these propositions well or strictly in hand or in memory. Police power, whatever may be the necessities, is operative only to subserve our citizenship, their rights and their interest. It cannot be made an engine of oppression, nor used to destroy the rights of our people, nor can it be resorted to to paternalize our government. These rights are sacred, whether in the state at large or within the confined limits of municipal corporations. Such authority should be confined to the regulation of matters appertaining to such corporation and the exigencies of such territory, and this only when the matters are not covered by the general law of the land. There are many things doubtless affecting the aggregation

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of people in cities which do not affect the people at large in the state. Under such circumstances cities should have sufficient police power for reasonable regulation. One of such matters is reasonable control of streets. This regulation should be exercised for the benefit of the citizenship of the city and those who use the streets for necessary purposes, always attended by the fundamental rule that such use must be exercised so as not to injure the rights of others or the public rights.

It occurs to me that the ordinance in question, viewed in the light of other ordinances mentioned in the statement of facts, is not only discriminating and unreasonable, but intended to be prohibitive, and its bond feature is not authorized, and, in my judgment, void. Illustrative of the above, an inspection of one ordinance discloses that all autos of every size and description are authorized to carry passengers throughout and all over the city of Ft. Worth by paying a license fee of $3 per annum, and for this no bond or insurance policy is asked or required in the way of indemnity. Under the other ordinance an auto carrying five passengers must pay $10 per annum; if it carries seven passengers it must pay $20 per annum, and if above seven passengers it must pay $30. In addition to these matters these autos or jitneys are confined to specific or segregated lines and streets. Besides this, each auto or the licensee under the second ordinance must take out an insurance policy to protect such licensee from "legal liability," provided such policy can in no event redound to the benefit of passengers carried in such auto. For this policy or indemnity contract the licensee must pay the exacted fee or premium demanded by the insurance companies. There may be no limit even set to the amount of the premium or fee to be paid. Otherwise the license cannot be obtained as authority for running the jitney. The insurance company, no one else, can sign the contract. If it demands $500 as a premium or fee, it must be paid, and this is made a prerequisite before the licensee can obtain the necessary license to operate his auto or jitney. Under one ordinance the auto or common carrier only pays $3 for the privilege of becoming a common carrier in the city limits for the space of one year. Under the other ordinance the auto, which we may call a jitney, pays from $10 to $30, besides the premium demanded by the insurance company. This looks to me to be

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sharply discriminating. It may be asked why this difference is made under the two ordinances. Can it be said that the passengers are less safe in one than in the other auto? If so, how or why? Can it be urged that the traveling public on the streets is less liable or more liable to damage from one of the autos than from the other? If so, how or why? It may be further asked if the public along the street is any more safeguarded by the exaction of from $10 to $30 than by the demand of $3. It occurs to me these ordinances cannot be reconciled along reasonable lines. It is not clear to my mind why the indemnity contract or insurance policy is demanded under one ordinance, and not under the other. It does not redound to the benefit of either the passengers in the car, for they expressly are excluded, or those traveling along the public streets, for the simple reason that by its terms the "legal liability" is limited to the licensee of the vehicle driven. Neither the passengers nor the public have any interest in the contract or policy. Nor is it clear to my mind how this indemnity policy, executed in favor of the licensee, could be any protection to anybody, unless it be the licensee. Before his legal liability could possibly arise that liability must be fixed in some way definitely upon the licensee, and if he were called upon to pay money in any way for damages or injury to people on the streets, he might possibly have a cause of action against the insurance company. This, if true, certainly would result in a multiplicity of suits to say the least of it, the end of which might be to defeat all rights even of the licensee. This indemnity contract is a matter exclusively between the jitney owner or licensee and the insurance company—made so on its face, without even specifying what is meant by the term "legal liability."

It may be asked, Does this term "legal liability" mean an indemnity of the licensee for what he may pay out for damages or cause to be made to pay out for damages, or is it protection against him from prosecution for injury of a criminal nature he may commit in running over or killing people on the streets? If it protects him against liability for his violation of criminal statutes, certainly it would hardly be maintainable against the insurance company. Indemnity of a party against his own criminal or tortious act would hardly be a legal contract. But viewed in another light, this indemnity contract under the ordinance is

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and can only be a matter between the licensee and the insurance company, that is, it is a contract between third parties to which the city is not a party and is not and cannot be made a party, and in which the municipal corporation as such has not and can have no interest. It could not change the relation of the third parties to each other by making a cause of action or defeating a cause of action or in lessening or enhancing the liability for acts between third parties. The public or the city has no interest in it. It is a matter between the licensee and the insurance company. There is ample authority, as I understand the law, based on sound principles, for the proposition that the city cannot demand or require bonds or contracts inuring to or operating only between third parties. This has been a matter of adjudication frequently. In support of the above proposition I cite Park Bros. & Co. v. Sykes, 67 Minn. 153, 69 N. W. 712; Breen v. Kelly, 45 Minn. 352, 47 N. W. 1067; Philadelphia v. Madden, 23 Pa. Co. Ct. 39; Lyth v. Hingston, 14 App. Div. 11. 43 N. Y. Supp. 653; Jefferson v. Asch, 53 Minn. 446, 25 L. R.A. 257, 39 Am. St. Rep. 618, 55 N. W. 604. To the same effect is Taylor v. Dunn, 80 Tex. 652, 16 S. W. 732; House v. Houston Waterworks Co. 88 Tex. 233, 28 L.R.A. 532, 31 S. W. 179; Galveston & W. R. Co. v. Galveston, 90 Tex. 411, 36 L.R.A. 33, 39 S. W. 96. Many other cases could be cited.

The further proposition, to my mind clear, is that a city can in no event demand indemnity bonds except for municipal purposes and to protect city contracts; these contracts inuring to the benefit of the municipal corporation. As between third parties the city has no concern and can neither lessen nor aggravate any cause of action between the citizens of a municipality, nor can it create a cause of action between them. For this reason it seems to me the city ought to be powerless to demand of one citizen an indemnity contract in favor of another citizen. But if, in any event, this can be done, there should at least be expressly granted authority in the city charter for so doing. This has not been done to the city of Ft. Worth. I do not care to further discuss this question, except to observe that the bond must be given with a corporation as surety, and such bond could not be signed by private persons as sureties, though the wealthiest in the state.
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This is additional discrimination and sufficient to nullify the ordinance.

Another question I mention briefly. The fees demanded are not, in my judgment, license fees. It is a tax pure and simple, and a tax of a graduated nature, ranging from $10 to $30 according to the number of passengers carried in the car or auto. If it is a license fee in fact, or so intended, it should make the same equal alike to all autos without reference to the number of passengers carried. This was done under the ordinance which demands a $3 license fee. The fee, which is in my judgment a tax under the ordinance under which relator was arrested, is not fixed on or confined to the auto as such, but to the number of passengers the auto carries, not as a regulation of the jitney, but as a tax proportioned to the number of passengers carried. This is not only a tax, but it is one in my judgment entirely discriminatory on its face as well as in its operation. The city is not authorized to levy this character of tax; therefore in the ordinance it is denominated a license fee. Under the guise of a license fee a tax, and a graduated tax at that, is levied and demanded. A license fee must be commensurate with the expense of maintaining the regulations, and cannot be used as a mere means of putting money into the treasury except for that purpose, and cannot be used as a revenue measure.

There is another matter of constitutional law involved in this case to which I might refer; that is where a constitutional right exists in favor of the citizen, the power does not exist in the state or legislature to require the giving of a bond which materially abridges or entrammels the exercise of such constitutional right.

This rule is well recognized, both in criminal and civil cases. In Callan v. Wilson, 127 U. S. 540, 32 L. ed. 223, 8 Sup. Ct. Rep. 1301, Justice Harlan in an elaborate opinion, concurred in by the entire court, held the right of trial by jury could not be abridged by requiring an appeal to a higher trial court when an appeal bond would have to be given as a prerequisite to secure such jury trial. That case has not been overruled nor modified. Many cases were reviewed bearing on principles of constitutional law. Trial by jury is not a more sacred right than the right of the citizen to pursue any lawful calling or business, even the right to use the streets of a city. Subject to lawful police regula-

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tion, as above observed in this opinion, such a business or calling as carrying passengers in a carriage or auto through the streets, and the general use of the public streets by the auto or "jitney" are matters as much of constitutional right as that of trial by jury, and can no more be abridged than the trial by jury. Police regulations or power must always act uniformly upon all alike in the same situation, and there can be no discrimination. There may be classification of subjects of police regulations where the classification arises from the nature of the subjects, and such subjects show a difference in the expense of maintaining reasonable police regulations; so, in this case there could be no different fees and regulations. However, such classification must be reasonable and just, and founded upon the nature of the subjects for classification. It can never be arbitrary, nor rest upon the mere will or caprice of the city, state, or legislative authority. The discriminations in the ordinances here involved are not reasonable nor just, but on their face, when the subjects of the nature of the discriminations are considered, show they are illegal, arbitrary, and depend upon the mere will of the legislative branch of the city. It may be matter of doubt that an ordinary auto is more hazardous to the public than an ordinary two-horse carriage or similar vehicle. Certainly one of two autos of the same size, with same or even different seating capacity, is not more hazardous or dangerous to the public than the other, nor does it, strictly speaking, require more expense in regulation than the other. Yet none of these regulations apply to carriages in Ft. Worth, and the discrimination between the autos of the same carrying capacity under one ordinance as against those under the other ordinance is purely arbitrary and exists without reason or justification, and only by the mere will of the ordinance-making power. For all the above reasons the ordinance is void under the 14th Amendment to the Federal Constitution, which provides that no person shall be deprived of life, liberty, or property without due process of law or be denied equal protection of the law, as well as under the provisions of the state Constitution and the Bill of Rights, which are to the same effect.

I have not discussed this ordinance in relation to other common carriers of the city, one of which is the street railway company, but I have said enough to convey some of the ideas I have for

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disagreeing with my brethren in upholding this ordinance. I, therefore, have reached the conclusion that the ordinance is unreasonable, is discriminatory, is intended to be prohibitive, and its bond feature is void, and that the alleged license fee is a tax, and not a license. I cannot, therefore, concur with my brethren in upholding this ordinance.

COLORADO PUBLIC UTILITIES COMMISSION.

CASTLE ROCK MOUNTAIN RAILWAY & PARK

v.

DENVER TRAMWAY COMPANY et al.

[Case No. 29.]

Commissions — Jurisdiction — Anti-trust laws.

The Colorado Public Utilities Commission has no jurisdiction to entertain a petition alleging violations of the laws prohibiting unfair competitions and illegal combinations in restraint of trade.

[August 9, 1915.]

PETITION alleging violations of the law prohibiting unfair competition and illegal combinations in restraint of trade; dismissed, with leave to amend the complaint within five days to base the cause of action solely on the alleged discrimination in the rates, practice, and service of the defendant the Denver Tramway Company, in favor of the defendant the Seeing Denver Company, and ordering that the demurrers of the defendants directed against all other matters contained in the petition be sustained, and that the defendant the Denver Tramway Company answer the amended petition within five days after it is filed with the Commission.

Appearances: Charles F. Quaintance for petitioner; Gerald Hughes and Howard Robertson for the Denver Tramway Company, defendant, C. C. Dorsey and E. I. Thayer for the Denver Union Terminal Ry. Company, defendant, J. H. Kuykendall for the Denver Omnibus & Cab Company, defendant, Robert R. Harvey for the Seeing Denver Company, defendant.

By the Commission: On the 15th day of July, 1915, the petitioner filed with this Commission a petition entitled, "Petition

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in re Unfair Competition and Illegal Combination or Confederacy in Restraint of Trade," the said petition being directed against the defendant public utilities, to wit, the Denver Tramway Company, the Seeing Denver Company, the Denver Omnibus & Cab Company, and the Denver Union Terminal Railway Company.

The petitioner alleges that it is a scenic incline railroad company, owned and operated by Charles F. Quaintance, and petitions in its behalf, and on behalf of thirty-six scenic trips out of Denver, and alleges "that the defendants, and each and all of them have formed and are a part of an illegal combination or confederacy in restraint of trade and fair competition for the purpose of controlling the tourist business, to the end that no scenic trips, except those operated by defendant, the Seeing Denver Company shall be taken by tourists."

The petitioner further complains that the defendant the Denver Omnibus & Cab Company has been granted the exclusive privilege of soliciting business from incoming passengers at the Union depot, the property of the Denver Union Terminal Railway Company, one of the defendants.

The petitioner further alleges that the Denver Omnibus & Cab Company owns and controls a large amount of the capital stock of the defendant the Seeing Denver Company, and grants to the said the Seeing Denver Company privileges not open to this complainant and to which said complainant is entitled; and that the defendant Denver Tramway Company permits the Seeing Denver Company to use the tracks of the defendant the Denver Tramway Company, exclusively, and maintains a discriminatory rate for special cars for the benefit of the Seeing Denver Company; the said rate not being open to this petitioner or others similarly situated; and the petitioner prays that this Commission afford a remedy as against the alleged illegal combination in restraint of trade, and that the plaintiff be given the same rights, rates, service, equipment, and privileges by the defendant the Denver Tramway Company, the Denver Omnibus & Cab Company, and the Denver Union Terminal Railway Company, as are now open to the defendant the Seeing Denver Company.

On July 25, 1915, the defendants filed petitions with this Commission for leave to demur to the complaint of the peti-

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tioner, and this privilege was granted by the Commission; whereupon, on July 28, 1915, the defendants demurred to the petition of the petitioner, alleging that this Commission had no jurisdiction as to the subject-matter of this action.

On the 30th day of July, 1915, the Commission heard arguments in support of and against the demurrers filed to the petition of the petitioner.

The petitioner, in its objection to the exclusive right to solicit incoming passengers, granted by the Denver Union Terminal Railway Company to the Denver Omnibus & Cab Company, does not complain as to the adequacy of the service of the Denver Omnibus & Cab Company, nor does the petitioner seek for itself an equal right to solicit passengers at the station of the Union Terminal Railway Company, so that it is unnecessary for us, at this time, to pass on the question as to whether it is within the jurisdiction of this Commission to order the Denver Union Terminal Railway Company to permit other persons and corporations the privilege of soliciting passengers at the station of the Denver Union Terminal Railway Company.

The complaint of petitioner complains of an illegal combination in restraint of trade. The Public Utilities Commission is not a court, but is a creature of the legislature, with defined powers, and our jurisdiction does not extend to complaints against illegal combinations in restraint of trade. The doors of the courts of the state of Colorado are open to the plaintiff in the event it has a cause of action in this regard.

The Commission, having carefully considered the petition of the petitioner and the demurrers filed by the several defendants, now *orders:*

First. That the petition of the petitioner be dismissed as to the Denver Union Terminal Railway Company, the Denver Omnibus & Cab Company, and the Seeing Denver Company, defendants.

Second. That the petitioner amend its complaint within five days from the date of this order, and base its cause of action solely on the alleged discrimination in the rates, practices, and service of the defendant the Denver Tramway Company, in favor of the defendant the Seeing Denver Company, and that the

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demurrers of the defendants directed against all other matters contained in the petition of the petitioner be sustained.

It is further *ordered* that the defendant the Denver Tramway Company answer the amended petition of the petitioner within five days after the same is filed with this Commission.

The Public Utilities Commission of the State of Colorado, S. S. Kendall, Geo. T. Bradley, M. H. Aylesworth, Commissioners.

CONNECTICUT SUPREME COURT OF ERRORS.

IN RE CONNECTICUT COMPANY.

(— Conn. —, 94 Atl. 992.)

Constitutional law — Delegation of power to regulate street railways — Commission.

1. The general assembly could constitutionally delegate to the Public Utilities Commission authority to determine the number of street railway tracks to be laid on a city bridge used as a public highway, as it involved the adjudication of a matter of an administrative character, and might properly be left for decision to a tribunal exercising administrative and executive functions.

Constitutional law — Delegation of power to regulate street railways — Commission.

2. A statute (Connecticut Special Laws of 1913, p. 1144, § 4) providing that the Public Utilities Commission is authorized to determine the number of tracks, not exceeding two, to be laid by any street railway company operating a street railway upon a certain city bridge, to be constructed under the provision of the act, subject to the rights of appeal provided for in the statute (chapter 128, Conn. Public Acts of 1911) establishing the Public Utilities Commission, which makes the orders that the Commission is authorized to make depend upon a finding of public convenience, necessity, or safety, establishes a primary standard governing the action of the Commission, and is not unconstitutional as authorizing the Commission arbitrarily to determine the number of tracks.

[July 16, 1915.]

APPEAL by the City of Norwalk, from a judgment of the Superior Court of Fairfield County, vacating an order of the Public Utilities Commission requiring the Connecticut Company to lay double tracks for its street railway on the new Washington Street

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bridge over the Norwalk river; reversed and remanded with directions.

Appearances: John J. Walsh, Edwin L. Scofield, and Edward J. Quinlan for appellant; George D. Watrous, Carroll C. Hincks, and Harry G. Day, for appellee.

Wheeler, J., delivered the opinion of the court:

The Connecticut Company is a street railway corporation which has for many years operated a single-track street railway over the old Washington street bridge being a part of Washington street, a highway in the city of Norwalk. The general assembly of 1911 authorized the town of Norwalk, through its bridge committee, to construct a new bridge across the Norwalk river in place of the old Washington street bridge. Special Laws of 1911, p. 490. In 1913 the general assembly consolidated the municipalities in Norwalk into the city of Norwalk, transferring to it the authority of the town over this bridge and continuing the powers of this committee. Special Laws of 1913, p. 1038, approved June, 1913. The city of Norwalk by this committee preferred its petition to the Public Utilities Commission, praying that the Commission order, among other things, the Connecticut Company to lay two tracks across this bridge and its approaches. The Commission so ordered, and the company took its appeal to the superior court, and in paragraph "b" of its reasons of appeal alleged that § 4 of the special act approved June 4, 1913 (page 1144), under authority of which the Commission made its order, was unconstitutional, in that it pretended to confer jurisdiction on the Commission to determine the number of tracks to be laid across the bridge by the company arbitrarily and without regard to public convenience or safety. Section 4 provided:

"The Public Utilities Commission is hereby authorized to determine the number of tracks, not exceeding two, to be laid by any street railway company operating a street railway upon the bridge constructed under the provisions of said act, subject to the rights of appeal provided for in chapter 128 of the Public Acts of 1911."

The city demurred to this paragraph because: (1) The question whether one or two tracks should be laid was one which the general assembly could itself have determined; (2) the act was

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administrative in character and properly delegable to the Commission by the general assembly; (3) the jurisdiction of the Commission under the special act depended upon a finding that the thing ordered done was required in the interest of public convenience or safety. The court overruled the demurrer, and upon hearing found the issues for the company, and held the act unconstitutional.

The trial court placed its decision upon two grounds: (1) That the act arbitrarily authorized the Commission to determine the number of tracks, not exceeding two, to be laid by the railway across the bridge; and (2) empowered it to order the railway to occupy and use a part of the city's property against the wishes of the railway or city or of both. The company upon this appeal presses one ground only, and does not rely upon the second ground of the court's decision.

We approve of its judgment in confining the discussion to the first ground of the court's decision, since this point appears to us to be the only one inviting an argument of substance.

[1] The general assembly had power to itself determine the number of tracks to be laid across this bridge. And it had power to delegate to the Commission the determination of the number of tracks to be laid, for this was the adjudication of a matter of an administrative character and might be properly be left for decision to a tribunal such as this Commission, administrative and executive in its functions. While undoubtedly the general assembly could not delegate to an administrative tribunal legislative discretion, it might declare its own will and delegate to such tribunal the power to execute its will and carry out its policy. The question of the proper number of tracks to be laid across a bridge which is part of a public highway is one whose solution depends upon an investigation of the conditions surrounding the location at the time of the decision, and the weighing of these in the light of the public or private benefit, or the reverse. Obviously the lawmaking body cannot know these, nor foresee changing conditions, and hence arises in many cases, as did in this case, the propriety, if not the actual public necessity, for committing the decision of this issue of fact to an administrative tribunal.

Legislation of this character, having established the primary

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standard, may devolve upon the administrative tribunal the executive duty of carrying out the purpose and policy of the statute. Red "C" Oil Mfg. Co. v. Board of Agriculture, 222 U. S. 393, 56 L. ed. 244, 32 Sup. Ct. Rep. 152; Interstate Commerce Commission v. Goodrich Transit Co. 224 U. S. 215, 56 L. ed. 737, 32 Sup. Ct. Rep. 436; United States v. Grimaud, 220 U. S. 506, 517, 55 L. ed. 563, 567, 31 Sup. Ct. Rep. 480; Union Bridge Co. v. United States, 204 U. S. 364, 51 L. ed. 523, 27 Sup. Ct. Rep. 367; Monongahela Bridge Co. v. United States, 216 U. S. 177, 193, 54 L. ed. 435, 442, 30 Sup. Ct. Rep. 356; Arms v. Ayer, 192 Ill. 601, 58 L.R.A. 277, 85 Am. St. Rep. 357, 61 N. E. 851.

[2] The company relies upon this principle, and contends that § 4 does not set up a primary standard governing the action of the Commission. The city assents to the company's claim that the power of the Commission to determine this issue must rest upon provision found in the special act which authorizes its order upon a finding of public convenience, necessity, or safety. As this is the only question made upon the argument of the appeal, we shall limit our consideration to that, and not consider whether the act might be sustained upon other grounds.

The Public Utilities Commission succeeded the railroad commissioners, and all the rights, powers, and duties heretofore vested in the railroad commissioners, and not inconsistent with the Public Utilities act, were transferred to and continued in the Commission, and new and enlarged powers were by the act vested in the Commission. Chapter 74 of the Public Acts of 1853 created the railroad commissioners, and provided that they might make orders in reference to the management and operation of railroads which in their opinion were necessary for the public safety. Throughout the many statutes relating to the powers of the railroad commissioners over railroads and railways, we find that public necessity, convenience, or safety is made the condition of the right of the commissioners to act. This basic fact is either found by the general assembly or delegated by it to the commissioners to find. The Public Utilities act was passed upon the public demand for greater public protection through larger control of and supervision over public service corporations. The act is broad in its sweep, extensive in the jurisdiction conferred,

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and far-reaching in the supervision of public service corporations and the control over public and private interests. It is essentially a remedial statute, and as such, like the workmen's compensation act, to receive a liberal construction designed to effectuate its cardinal purpose.

It would be a singular legislative condition, if it were so, that within two years of the enactment of this highly important piece of constructive legislation the legislature were found to have passed an act intentionally disregarding the foundation upon which all of the powers of the railroad commissioners over railroads and railways rested and committed to their successors in this single matter of operation the power of acting at their will and without regard to the necessity, convenience, or safety of the public. And that, too, while leaving all other administrative matters contingent upon this vital principle of public welfare. Doubly singular would this be when the legislature twice in 1911, the year of the enactment of the Public Utilities act, and twice in 1913, the year of the passage of the special act in controversy, made the public convenience or necessity or safety the basis of the administrative orders authorized by the new Commission. Public Acts of 1911, chap. 230; id. chap. 288; Public Acts of 1913, chap. 210; id. chap. 225. And it is significant of the common legislative intent that the Acts of 1913 were approved within two days of the approval of the special act in controversy.

An examination of the Public Utilities act discloses that all of the orders which the Commission is authorized to make are by the terms of the act dependent upon a finding of public convenience, necessity, or safety. By the terms of § 13 of the Utilities act, the orders of the Commission affecting the operation of a railway are such only as may be reasonably necessary for the public safety, or the health or safety of the employees of the railway. The policy and purpose of this act, no less than its terms, demonstrates the incapacity of the Commission to act upon its own arbitrary will. If § 4 of the special act of 1913 had been a part of the act of 1911, we cannot conceive, in the light of the other provisions of the act, how, in reason, it could be claimed that an order thereunder might be made at the will of the Commission. But § 4 is necessarily amendatory of the original act, and the two are to be construed together as if one act. The terms

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of § 4 are inharmonious to arbitrary action. The Commission is authorized to determine the number of tracks not exceeding two. It has a settled procedure handed down from its predecessors, confirmed by its own terms, established by the custom and policy of the community.

An administrative tribunal charged with the duty to determine a given matter must accord a hearing to parties in interest. The Commission can determine after it has accorded a hearing. There is no subject-matter for a hearing under § 4, other than whether there should be one or two tracks across this bridge, and there is no method of determining this except it be, as the appellant well says, "in conformity with principles underlying the establishment of the Commission." The right of appeal accorded by § 4 also protects the company against arbitrary action by the Commission. It may not act illegally, or in excess of its powers, or arbitrarily, else the court will set aside its order. Public Acts of 1911, chap. 128, § 29. No difference is made between an appeal from an order under § 4 and from orders under the Utilities act, and the most natural inference is that the legislature did not make a difference because it found that each were alike in dependence upon the fundamental principle of public welfare upon which the Commission might act.

The company, through the charter of its predecessor, was given the right to lay tracks, not exceeding two, across this bridge. The legislature at the time of the grant determined that at some time two tracks might be of public convenience and necessity. If the decision of when this should be done had been left to the company, we apprehend that this grant could not have been attacked because of the possibility of arbitary decision by the company. Less reason for anticipating arbitrary action will be found in the decision of this same question by an impartial public tribunal of high authority. The legislature had power to amend the charter of the company, and thus to transfer the decision of this question to the Commission. We find in the terms of § 4 of the special act, in the constitution of the Commission, in its purposes, and in the principles and policy underlying the railroad commissioners and their successor, the Public Utilities Commission, the manifestation of the legislative intent to con-

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dition the order of the Commission upon the public convenience, or necessity, or safety.

In its brief the appellee concludes that "the Commission may reach this determination on any basis which it pleases, private or public, personal or political, with or without notice or hearing. In any and every case its determination will be within the limitations of power which the general assembly has attempted to confer upon it."

We think this ignores the fact that the Commission must determine, and hence hear; overlooks the provision for appeal guarding the rights of parties against the illegal or excessive or arbitrary action of the Commission; fails to take into account the fundamental principle at the base of any order of the Commission; and disregards the purpose of our Public Utilities act and the established policy of our law toward the subjects of its jurisdiction.

We omit discussion of the claim that the Public Utilities Commission had jurisdiction over this question under the act of its origin without reference to § 4, for the reason that this issue of law is not fairly raised on the appeal.

There is error; the judgment is set aside, and the cause remanded, with direction that the demurrer to paragraph "b" of the reasons of appeal be sustained, and the cause proceeded with according to law. In this opinion the other judges concurred.

ILLINOIS PUBLIC UTILITIES COMMISSION.

WAYNESVILLE TELEPHONE EXCHANGE, BY JAMES DAGLEY,

v.

NATIONAL TELEPHONE & ELECTRIC COMPANY et al.

[No. 3428.]

Service — Telephones — Physical connection — Public convenience and necessity.

1. Public convenience and necessity were held not to demand a physical connection between the lines of two telephone companies, where a petition for the connection was signed by only a small minority of subscribers of each company after the majority had been importuned to

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sign, and where it also appeared that the moving ground of the complainant was not to obtain an interchange of local service, but to obtain the free service of its competitor under a reciprocal arrangement which would not be fair to the latter and would result in its lines being made use of at little or no cost to the complainant.

Service — Telephones — Physical connection — Impairment of service.

2. A telephone company cannot refuse to make a physical connection with the lines of another company for the reason that such lines are grounded, and are not constructed in a manner capable of rendering good service, where the lines are no different than those of other rural companies with which the objector has established connection.

Service — Telephones — Physical connection — Injury to private rights.

3. A telephone company was refused authority to make a physical connection with the lines of a local competitor, which charged higher rates, at a place where they both operated exchanges, and with a third company having connection with the competitor by means of a toll line, where an interchange of local calls on a reciprocal free basis would result in subscribers of the competitor seeking the cheaper service of the applicant, and if a protective rate were applied there would be no intercompany calls; and where the applicant, by means of its trunk-line connections at a number of points, had access to the toll systems of the competitor, the third company and also a fourth company serving extensive territory.

[August 5, 1915.]

APPLICATION to compel physical connection of telephone lines; dismissed.

The appearances are set out in the opinion.

By the Commission: The petition in this case represents that the complainant is engaged in the management and operation of a telephone system, consisting of rural lines in Dewitt and Logan counties and a local exchange at Waynesville, Dewitt county; that the defendants are public utilities and have refused to permit a "just, equitable, and mutual connection" between their lines and the exchange or switch board of the complainant.

Answering, the defendant National Telephone & Electric Company, hereinafter referred to as the "national company," denies all of the allegations of the complainant, and avers the fact to be that it is impossible to establish a "just, equitable, and mutual connection" between the exchanges or switch boards of the complainant and said defendant. Similar denial of the complainant's allegations is made by the defendant Baker Telephone System, and the further statement is made that the Baker Telephone Sys-

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tem is not opposed to the establishment of a physical connection with the Waynesville Telephone Exchange, provided satisfactory terms can be reached governing the establishment of such connection.

Hearing was held at Springfield, Illinois, May 4, 1915. James Dagley appeared for the complainant; Orville F. Berry and B. B. Boyntón, attorneys, appeared for the defendants.

It appeared from the testimony presented by the complainant, that the Waynesville Telephone Exchange is an association of rural lines centering in the village of Waynesville and operating a telephone exchange in that village, which serves about seventy-five town subscribers and about one hundred rural subscribers; that the national company also operates an exchange at Waynesville, serving about eighty-nine subscribers in and around the village; that the Baker Telephone System does not operate an exchange at Waynesville, but has physical connection at that point with the national company by means of a toll line extending from McLean to Waynesville; that the Waynesville Telephone Exchange has connection, by means of trunk lines, with a number of points, *viz.*, Wapella, Heyworth, Benson, Atlanta, and Minier, and that by means of such trunk-line connections complainant's subscribers have access to the toll-line system of the Central Union (Bell) Telephone Company and its connecting companies, also to the system of the national company.

It further appeared that the national company furnishes to its subscribers in the village of Waynesville so-called free service with other points on its system including Clinton, which is the county seat and commercial center of Dewitt county; that the complainant sought the establishment of a physical connection with the national company at Waynesville for the interchange of local service, and in order that complainant's subscribers might have direct connection with the system of the national company; that the national company refused to consider any proposition which provided for the establishment of a physical connection for the interchange of local service, and that it made a counter proposition to the complainant, which provided for the establishment of such connection on a toll basis, and that this proposition was rejected by the complainant.

[1] In support of its contention that there is a demand for the

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establishment of a physical connection between the lines of the Waynesville Telephone Exchange and the national company and the Baker Telephone System, the complainant presented, at the hearing, a petition signed by thirty-five subscribers of the Waynesville Telephone Exchange and seven subscribers of the national company.

It appeared from the testimony presented by the national company, that certain subscribers of the complainant are seeking the establishment of a physical connection with the lines of the national company for the purpose of using such lines in the same manner as they use the lines of the complainant; that the national company has adequate facilities in the village of Waynesville; that the complainant is responsible for the divided service in the village of Waynesville and the rural territory contiguous thereto, by reason of a desire on the part of its subscribers for a cheap telephone service; that the subscribers of the complainant are not deprived of toll service, either over Bell lines or the lines of the national company, and that the establishment of a physical connection in the manner desired by the complainant would result in irreparable injury to the national company.

No testimony was presented by the Baker Telephone System, but its counsel stated that it was not opposed to the establishment of a physical connection for the handling of toll messages, provided satisfactory terms could be arranged.

The Commission held, in the case of J. C. Woker v. Pearl City Independent Teleph. Co. No. 2938, that in considering a proposed physical connection between the lines of two competing companies it is necessary that the facts in the case be such as to show clearly (1) that public convenience and necessity demand and require the establishment of the physical connection; (2) that the establishment of such connection is practicable; (3) that it would not impair the service of either company; and (4) that it would not seriously interfere with or jeopardize private rights.

In this case, on the question whether public convenience and necessity require a physical connection, proof is lacking. The petition presented at the hearing by the complainant carries the names of forty-two persons, thirty-five of whom are the subscribers of the complainant and seven of whom are subscribers of the national company. As the complainant is serving about 175

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subscribers from its Waynesville exchange, and the national company is serving about 89 subscribers, it does not appear that this petition represents the view of a majority of the subscribers of both companies at Waynesville, particularly when it was brought out at the hearing that such subscribers were importuned to sign the petition by certain other subscribers.

The complainant does not allege, and the testimony does not establish, that an interchange of local service is desired by the subscribers of the Waynesville Telephone Exchange. On the contrary, it appeared from the testimony that the desire of the parties responsible for the filing of the complaint was that the national company be required to furnish so-called free service over its system to the subscribers of the complainant, and that the latter, in return, give so-called free service over its system to the subscribers of the national company, the assumption being that the use of the facilities of one company would counterbalance the use of the facilities of the other. In other words, that a purely reciprocal arrangement would be proper and should be made.

Complainant's manager testified that one reason the establishment of a physical connection is desired, is because, under present conditions, the subscribers of the complainant can only reach the subscribers of the national company in a round-about manner and that a more direct connection between the two companies would enable the complainant company's operator to handle calls more conveniently than is possible under the existing arrangement. Complainant's manager further testified that he felt that an interchange of service on a so-called free basis would be to the advantage of the national company, but to what extent this arrangement would benefit the national company was not explained by the witness.

It seems quite clear in this case that the complainant company is seeking the establishment of a physical connection between its own exchange and that of its competitor without giving any consideration to the probable effect of such a connection. Complainant's manager stated that the Waynesville Telephone Exchange is "not looking out" for the National Telephone & Electric Company, and although he finally admitted that a charge probably should be made on all intercompany messages, it was very evident, from his testimony, that the chief desire of the complainant is to obtain

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the use of the lines of its competitor at little or no cost to itself. This was further borne out by the testimony of other witnesses for the complainant.

[2] In so far as the practicability of the connection in this case is concerned, there appears to be no physical obstacle in the way of its establishment. While witnesses for the national company testified that the lines of the complainant are all grounded, and not constructed, in a manner capable of rendering good service, it appears that the lines of the complainant are no different than those of other rural telephone companies with which the national company has established connection.

[3] That the establishment of a physical connection under the conditions desired by the complainant will result in injury to the national company is apparent from the record in this case. The rates of the complainant are: Business telephones $10, residence telephones $6, and rural telephones $4 per year, while the Waynesville rates of the national company are: Business telephones $20, residence telephones $15, and rural telephones $15 per year. With the complainant serving approximately 175 subscribers and the national company serving only about 89 subscribers, it is obvious that if a connection is established between the two companies, in the manner desired by the complainant, and the rates of the two companies remain as above quoted, many of the subscribers of the national company will seek the cheaper service of the Waynesville Telephone Exchange. This would result in a corresponding loss to the national company.

Assuming that a physical connection were established, it is unlikely that arrangements could be made for the interchange of local service on a so-called free basis, and since there is considerable difference in the amount of investment and the character of the construction of the two properties, which, in effect, is reflected in the higher rates of the national company, some protective rate would have to be applied to all intercompany calls, and with such rate in effect it is doubtful whether there would be any intercompany traffic between local subscribers. In fact, the testimony strongly tends to show there would be practically no intercompany calls if a protective rate were applied.

It is possible that the subscribers of the complainant may have occasion to make use of the toll lines of the national company, but

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the record shows that the complainant now has toll connection through Benson and Minier with the toll-line system of the Central Union Telephone company, and also connections through Wapella and Atlanta with the lines of the national company and its connecting companies, including the Baker Telephone System.

After a careful consideration of all the facts presented in this case, we are of the opinion that the prayer of the petitioner for the establishment of a physical connection between the exchanges of the Waynesville Telephone Exchange and the National Telephone & Electric Company at Waynesville, Dewitt County, Illinois, should not be granted.

It is therefore *ordered* that the complaint of the Waynesville Telephone Exchange, by James Dagley, against the National Telephone & Electric Company and Baker Telephone System be, and the same is, hereby dismissed.

By order of the Commission, this 5th day of August, 1915, dated at Springfield, Illinois.

INDIANA PUBLIC SERVICE COMMISSION.

IN RE PERU HEATING COMPANY.

[No. 1080.]

Valuation — Real estate.

1. The test for determining the value of the real estate on which the plant is located, in valuation proceedings for rate-making purposes, is what the real estate is worth on the market for any legitimate use to which it might be put in a competitive market with other available sites for that purpose, and not the price that a utility might be willing to pay for a parcel of real estate which it does not own and on which its plant might be located, rather than to remove to another location.

Valuation — Going value — Working capital — Heating plant.

2. In a proceeding to determine the rates for hot-water heating service rendered by a plant valued at $42,454, an allowance of $7,546 was added for going value and working capital.

Depreciation — Amount allowable.

3. In fixing the rates for hot-water heating service, an allowance of 3 per cent on the total valuation of the utility for straight line depreciation and 2 per cent on the sinking-fund basis was held reasonable where it appeared that the life of the distribution system was estimated at twenty-five years; the plant equipment estimated to be in

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50 per cent condition after thirteen years' use, and the buildings estimated at 90 per cent condition.

Rates — Jurisdiction of Commission — Effect of surrender of franchise which prescribed the rates.

4. The Indiana Public Service Commission has power to regulate the rates of a public utility that has surrendered its franchise, containing a fixed rate to be charged for services rendered, and has accepted in lieu thereof an indeterminate permit to operate its plant.

[August 11, 1915.]

PETITION for authority to increase rates for hot-water heating service in the city of Peru, Indiana; order authorized an increase of rates from 20 cents to 25 cents per square foot of radiation on the basis of an installation of 91,500 square feet upon finding the valuation of the plant and intangible properties to be $50,000, and the operating expenses and taxes to be $17,800, and directed the company to set aside a depreciation fund of 2 per cent, annually, on the value of its plant and intangible properties until the further order of the Commission.

The appearances are set out in the opinion.

By the Commission: The petitioner in this case prays for authority to increase its rates and charges for hot water heating service in the city of Peru, Indiana, from 20 cents per square foot of radiation which is the present rate charged to 27 cents per square foot.

A valuation of its physical property was made by the staff of the Commission, and a copy of the tentative valuation was duly served on the petitioner and on the mayor of the city of Peru. An audit of the books and accounts of the petitioner was made by the Commission's accountants, and a copy of this audit was also furnished to the petitioner and the mayor of said city of Peru.

The city appeared and filed an answer to the petition, admitting in part and denying in part the allegations thereof, and filed also a special answer denying the jurisdiction of the Commission or its power to authorize an increase in rates, for the reason that the petitioner is operating under a franchise which fixes a maximum rate of 20 cents per square foot of radiation. A hearing was had at the rooms of the Commission beginning on the 17th day of May, 1915, and closing at Peru on the 20th day of May, 1915. The petitioner appeared by Stuart, Hammond, and Simms and

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J. M. Tillett, its attorneys; and the city of Peru appeared by David E. Rhodes and Frank Butler, its attorneys.

The facts are: The Peru Heating Company was organized July 25, 1902. It has $30,000 par value of capital stock now outstanding.

In 1902 a bond issue of $75,000 was authorized, and of this authorized issue $41,000 par value was issued to M. H. Shott, as part payment for constructing the heating plant of the petitioner in the city of Peru. The agreed price for constructing this plant was $63,000, which was to be paid by issuing said bonds for $41,000 and a cash payment of $22,000. Of the original stock issue, Jerome Herff received 60 shares; Joseph M. Bergman, 20 shares; Richard E. Edwards, 20 shares; and Richard A. Edwards, 500 shares. The shares are of the par value of $50 each; the stock was paid for in cash at par. The franchise under which the petitioner operated prior to September 16, 1914, was granted by the city of Peru to Jerome Herff, and by him assigned to the Peru Heating Company for a consideration of $3,300.

The petitioner began operations November 7, 1902. The total operating revenues and operating expenses since that date have been as follows:

For the Heating Season.	Operating Revenues.	Operating Expenses.
1902–03	$ 2,192.01	$ 4,361.23
1903–04	8,898.83	7,891.23
1904–05	11,143.98	7,271.22
1905–06	11,511.35	6,336.92
1906–07	12,665.24	12,535.16
1907–08	14,164.24	9,705.08
1908–09	13,666.18	10,625.13
1909–10	13,506.58	8,397.41
1910–11	14,152.20	11,961.08
1911–12	15,353.44	16,608.62
1912–13	16,020.80	13,456.91
1913–14	18,137.83	18,082.07
1914–15 (to Jan. 1)	7,273.22	7,574.31
Net operating revenue		23,879.53
	$158,685.90	$158,685.90

During the life of the plant nonoperating revenues have amounted to $15,704.94, making a net income from operating and nonoperating revenues of $39,584.47. Considering the value of the plant during this period at $63,000, which is the amount paid for its construction, this net income would pay 4.8 per cent

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annually on the investment, but this would allow nothing for depreciation. The principal item of income from nonoperating revenues is from equipment and labor profit. This is necessarily an uncertain income, and will no doubt decrease rather than increase, as it is dependent on the demand for new installation.

Valuation.

A valuation of the property of the petitioner was made by the staff of the Commission, and, on behalf of said petitioner, C. B. Veal and J. C. Hornung each submitted a valuation. Mr. Hornung's valuation is on the reproduction new of the plant, and he does not fix a depreciated or present value. He is familiar with the original construction of the plant, having been actively connected with the contracting company that had the contract to and that did install the entire plant.

On behalf of the city of Peru, Mr. Charles Brossman also submitted a valuation. Neither Mr. Hornung nor Mr. Brossman had sufficient time to examine the plant in detail before the hearing. The following table will suffice for a general comparison of their work.

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fixed by the staff are too low. The same is true as to the difference in cost new and present value of buildings and miscellaneous structures. The difference of $5,997.21 in cost new and $3,361.41 in present value of plant equipment is largely accounted for in unit prices for material and labor. Mr. Veal includes one boiler at a value of $1,269, which is not included in the staff's appraisal, for the reason that it was being removed for the purpose of being replaced by a new one. This accounts for that amount of the difference. The new boiler has been placed in the plant since the staff's appraisal, and the cost, in place of $2,841, should be added to the staff's appraisal of plant equipment. We also regard the staff's appraisal of general equipment as fair. The difference of $7,700.78 cost new and $4,222.96, present value of pavement, is nearly all on account of including pavement which had not been cut by the company. This we cannot allow.

If we add to the staff's present value of $39,153, the sum of $360, which is the excess over the staff's value on the real estate which we have concluded to allow, and also add the sum of $2,841 on account of the additional boiler installed since the staff appraised the property, we have a total of $42,454, which we have determined is the fair value of the physical properties of the Peru Heating Company used and useful for the convenience of the public.

[2] To this we will add for going value and working capital $7,546, making the value of the plant tangible and intangible $50,000.

Operating Expense.

Operating expenses as estimated below are believed to be fair and reasonable to all parties:

Two engineers	per	annum	$ 1,664.00
Two firemen	"	"	1,008.00
Coal shovelers	"	"	500.00
Linemen	"	"	300.00
Superintendent	"	"	1,020.00
Bookkeeper and collector	"	"	390.00
Repairs	"	"	2,300.00
Fuel	"	"	9,500.00
Oil	"	"	100.00
General manager	"	"	600.00
Taxes	"	"	418.00
Total operating expenses			$17,800.00

The general manager's compensation is fixed on the theory, which the evidence seems to fully establish, that only a portion of

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his time is given or required in connection with the affairs of the company.

Depreciation.

[3] The engineers who examined the plant under consideration estimated the life of a distribution system of a plant like this one, and in soil conditions of the character of those found at Peru, at twenty-five years.

Plant equipment is also considered by them to be in 50 per cent condition after thirteen years' use, and buildings are rated at 90 per cent condition. So that the weighted average on the whole plant, including real estate, going value, and working capital which do not depreciate for straight line depreciation, ought not to exceed 3 per cent, and 2 per cent on the sinking-fund basis will be ample.

Allowing an income of 7 per cent on the valuation of $50,000, we have	$3,500.00
2% depreciation on same is	1,000.00
Operating Expenses and taxes	17,800.00
—makes a total to be provided of	$22,300.00

The amount of radiation installed on this plant is 91,500 square feet. The order is made in this case on the basis of this installation. If a new basis for measuring radiation should be hereafter adopted, which would materially change the amount of radiation as now installed, this order would be subject to modification to meet the changed conditions.

[4] The Peru Heating Company was operating under a franchise which fixed a rate to be charged for the services rendered, but prior to the commencement of the proceedings in this case said company surrendered said franchise and accepted in lieu thereof an indeterminate permit, and under the holdings of this Commission in previous cases presenting a similar question, we consider that the Commission has power in this case to grant an increase in rates if the evidence justifies such an increase. On the basis of the radiation installed at the time of the hearing, a rate of 25 cents per square foot of radiation would produce a return sufficient to meet the requirements above found. The income that the company has heretofore received has been only sufficient to meet the operating expenses and repairs and pay the fixed charges. No dividend has ever been paid on capital stock. The plant has

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been half worn out in furnishing service to, its patrons, and has never been able to lay aside a depreciation fund to take care of this loss. In view of this fact it certainly would not be unreasonable to allow a rate of 25 cents per square foot of radiation on the radiation as now installed.

It is therefore *ordered* by the Public Service Commission of Indiana that the Peru Heating Company be and is hereby authorized to file a rate of 25 cents per square foot of radiation installed for service in and through and by its hot-water heating plant in the city of Peru, the same to become effective on and after the 1st day of September, 1915, which rate is now hereby approved.

It is further *ordered* that said company set aside a depreciation fund of 2 per cent, annually, on the value of its plant and intangible properties as herein found until the further order of this Commission.

Note.—Methods determining market value of land in rate cases.

The determination of the market value of land as worked out by the Commissions does not depend wholly on opinion evidence as to value, but may be based largely on what is known as the sales method by which the actual prices paid for adjoining lands are ascertained, or else comparisons are made between actual sales considerations and assessed value of other land, and the ratio found from which the actual value of a given parcel can be worked out. In the Report of the Committee on Railroad Taxes and Plans for Ascertaining Fair Valuation of Railroad Property before the National Association of Railroad Commissioners, 1 Public Service Regulation, 757, it is said: "The task of ascertaining actual values of adjoining land is a very delicate proposition. . . . Professor [Henry C.] Adams, in carefully testing the work of one expert engineer, found that the engineer had given a value to the right of way four times higher than was warranted by the sales. The sales method is being used very extensively by the different states. It is undertaken by this method to find out the actual consideration paid in bona fide transactions during recent years for adjoining tracts of land. In one state, for instance, they took all actual transfers for 3 miles each side of the center of the track covering four years' time. In Oklahoma, the following method is used: First, the railroads are required to report regularly the actual cost of all land purchased. Assessments, exclusive of permanent improvements, are required by the state. These are entered on a plat kept by the Commission. All transfers during the last five years will be entered on this plat by the Commission. This informa-

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tion will be given to three disinterested appraisers that are familiar with costs,—preferably to persons that have purchased land for railroad purposes. The report of the appraisers of the purchase prices and the assessed values will be tabulated and used by the Commission to determine fair present value."

In Hill v. Antigo Water Co. 3 Wis. R. C. R. 623 (1909) the method of appraisal used is described as follows: "The engineer of this Commission largely relied upon the method for determining the market value that is employed by the Tax Commission of this state. This method appears to be logical, and has generally been found to lead to fairly accurate results. It is also a method that may be readily understood. It consists largely of comparisons between the selling price of the land and the assessed value of the same in various localities, and of determining the ratio which the latter bears to the former. This ratio, in turn, is then applied to the assessed valuation of similarly situated property, and the two constitute the basis upon which the market or present value of this property is determined. It is needless to say that the results obtained under these methods are not adopted until fully tested, or unless they are found to be approximately correct when viewed in the light of all the conditions by which the value of the property may be affected."

In State Journal Printing Co. v. Madison Gas & Electric Co. 4 Wis. R. C. R. 501 (1910), the engineer of the Commission testified that in fixing values on respondent's land, the method of averages had been applied, taking the average assessed value per acre or other unit of several selected similarly situated tracts, and applying the percentage of assessed value to the average bona fide sale value during a recent period, either the past year or past five years as determined by the state board of assessments for the assessment district in which the land in question is situated. This method gives the value per unit. If the land in question involves the acquisition of a number of separately owned parcels, 10 per cent may be added on this account.

In a memorandum submitted by W. D. Pence, engineer, in this case, the sales method of valuing real estate was described as follows: "The sales method of valuing real estate was used partially in the Michigan railway appraisals of 1900–1901, and in the light of the experience gained in that work the method was adopted in the Wisconsin steam road valuations made under the provisions of the ad valorem assessment law of 1903. It has since been extensively used in Wisconsin and elsewhere in connection with important valuations of public service properties for both rate-making and taxation purposes, and is generally accepted as a valuable aid to the judgment by experts engaged in such valuation work on a large scale. The sales method may be defined as a plan or process for the systematic collection and comparison of data relating to real estate transfers for

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the purpose of estimating true market realty values. It consists in a study of the transfers of neighboring property having conditions or characteristics similar to the land whose value is to be determined, and is intended to duplicate, as nearly as may be, the mental or judicial processes ordinarily employed by the so-called 'local real estate expert,' with a view to arriving at results approximating those which would be reached by such local expert acting without bias or suggestion. The sales method is capable of application in a variety of ways; in fact, is as flexible in its possible applications as are the varied methods employed by individual local experts. Two interpretations of the sales method have been most commonly employed. In one of these the area and consideration in each sale of similarly situated land is found, and the average unit price (per square foot, per foot frontage, per lot, per acre, etc.) ascertained, and this unit applied to the tract under investigation. The other application of the method introduces what, in many cases is believed to be an additional safeguard, consisting of the use of the average assessed value of adjacent or similarly situated lands, in combination with an average ratio or percentage representing the relationship of the assessed value of transferred lands to the total consideration paid for such transferred lands in the district or locality under consideration, all of these figures being based on the 'ground values' exclusive of the improvements thereon. Such use of assessment figures is designed to introduce, as far as may be, the results of the judicial processes of the assessor who, at least in theory, serves on behalf of the public as an unbiased expert in the matter of relative valuations, and who attempts to make allowance for the peculiar attributes or characteristics of individual parcels of real estate in any given locality or neighborhood of a city. In the broader and more flexible applications of the sales method, the expert adopts one or the other of the processes just outlined, or blends the two together in such fashion as to yield the most consistent and trustworthy final result."

For tables showing application of the sales method of valuing real estate, together with tables of comparison between valuing by the sales method and by real estate experts, see pp. 531 et seq. Ibid.

It has been held that in appraising the value of land an effort must be made to ascertain the present "fair value." By this is meant that it would be unfair to take boom figures, and that it would be equally unjust to fix the price at what the property would bring at a forced sale. Re Queens Borough Gas & Electric Co. 2 P. S. C. R. (1st Dist. N. Y.) 544 (1911); Mayhew v. Kings County Lighting Co. 2 P. S. C. R. (1st Dist. N. Y.) 659 (1911).

The mere fact that a tract of land has been divided up into building lots has been held not sufficient ground for allowing a value based on front-foot prices. In Re Lake Tahoe R. & Transp. Co. 2 Cal. R. C. R. 830 (1913), the railway company claimed that the

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reproduction value of its right of way from Truckee to Tahoe should be estimated by applying front-foot prices. It appeared that the entire canon of the Truckee river, from Truckee to Tahoe, had been subdivided into lots having an area of about 2 acres each, and that efforts had been made by these owners to dispose of these lots. Of a total of 610 lots, 59 only had been sold. No lots at all were sold during the preceding year. The lots so sold represented the best building sites, and were sold at from 25 per cent to 50 per cent of the listed market price. From Truckee south, along at least one half the extent of the company's right of way, only three lots had been sold. The railway company estimated a reproduction value of its right of way amounting to $54,919.30, being on a basis of $655 per acre. This value was ascertained by taking a front-foot value of $5 per foot throughout the entire extent of the right of way. Thelen, Commissioner, said: "This Commission's engineering department estimated the reproduction value of right of way and station grounds at $17,422.50. This item includes not merely the right of way between Truckee and Tahoe, but also a portion of the public commons used by the railway company at Tahoe City, and other property used for station-ground purposes at Truckee and Tahoe City. . . . The mere fact that acreage property is subdivided does not in itself necessarily increase the value thereof. Nor does the fact that property is held at a certain figure indicate its true value. In the present case, it appears that none of these lots have been sold during the last year, and that those which were theretofore sold were largely the best sites, and that they were sold at large percentages off the listed price. I am convinced that most of these lots will not be sold for many years to come for building sites, but that they will remain in their present condition on rough mountain land, worth certainly not to exceed $8 or $10 per acre for grazing purposes. I am convinced that this Commission's engineering department's estimate in this respect is a fair one, and shall be guided by it."

Land may be valued separately from the buildings and structures upon it.

In Re Queens Borough Gas & Electric Co. 2 P. S. C. R. (1st Dist. N. Y.) 544 (1911), it is said that it is not fair to "assume that the buildings are not there, and then take the highest estimate a real estate broker thinks might be obtained for the land itself; for if the land is appraised on this basis and the buildings on a use-value basis, instead of a scrap-value basis, there would be duplication and inconsistency. It would also be unfair to assume that the buildings are to be scrapped and the land sold for a less advantageous use than might be made of it." The buildings should be appraised on the basis of cost to reproduce less depreciation.

To the same effect, Mayhew v. Kings County Lighting Co. 2 P. S. C. R. (1st Dist. N. Y.) 659 (1911).

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In Re Metropolitan Street R. Co. 3 P. S. C. R. (1st Dist. N. Y.) 113 (1912), in referring to the market value or cost of acquisitions of land, it is said that the amounts set down for this item in the appraisal "represent the opinions of the experts as to the land alone, assuming there were no buildings upon the property, and that the land was about level with the surface of the streets. Of course there are buildings upon these plots, and it is important to note a few facts in this connection. The buildings are appraised by the applicants upon the assumption that they are to remain for many years, —until their usefulness for street railway purposes ceases. Land is appraised as if there were no buildings upon it. But if the buildings were appraised upon the assumption that they would be scrapped, their value would doubtless be slight, for land and buildings upon that basis would have a market value probably not greatly in excess of the value of the land alone, certainly not equal to the market value of the land plus the cost of the buildings. If, therefore, buildings are appraised upon the basis of continued existence,—not considered as sold with the land and probably scrapped,—and if land is appraised at its fair market value without buildings, the amount fixed as the value of the land will be generous. It is certain that the owners cannot realize as much by other sales, because probably no one would pay the fair market value of the land plus the cost to reproduce value of the buildings. It is only by treating the undertaking as a 'going concern' that one can justify the appraisal of the land at its fair market value, and of the buildings at their cost or cost to reproduce less depreciation. The moral is that land values should be conservatively estimated, for if land were to be valued at the highest estimate which an enthusiastic real estate broker with visions of a boom before him were to fix, and buildings were to be appraised at cost without any allowance for depreciation as if they were to live forever, there would be duplication and inconsistency. Upon the other hand, it would be unfair to assume that the buildings are worthless, and that the value of the ground is only what it will bring at a forced sale."

For land valuations see also: Re Dell Segno, P.U.R. 1915A, 857; Meek v. Consumers Electric Light & P. Co. P.U.R. 1915A, 956; Columbia v. Watts Engineering Co. P.U.R. 1915B, 921; Re Marin Municipal Water Dist., P.U.R. 1915C, 433; Commercial Club v. Missouri Public Utilities Co. P.U.R. 1915C, 1017; Re San Francisco-Oakland Terminal R. Co. P.U.R. 1915D, 44.

P.U.R.1915E.

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NEW JERSEY BOARD OF PUBLIC UTILITY COMMISSIONERS.

IN RE FARMINGDALE LIGHTING COMPANY.

Discrimination — Discount in favor of officers and employees.

The practice of allowing directors, officers, and employees different rates of discount than are allowed other purchasers of electric current is illegal, and, where offered in favor of officers, cannot be justified on the ground that they receive no salary or other compensation.

[July 12, 1915.]

INVESTIGATION of the practice of the Farmingdale Lighting Company with reference to discounts; preferential discount in favor of officers and employees of the company ordered discontinued.

Appearances: L. W. Farry for borough of Farmingdale; W. J. Lansley for the company.

By the Commission: In making an investigation of the service supplied by this company to its customers, it was learned that widely different discounts were allowed.

The reasonableness of the rates charged by the company is mentioned in the complaint, but was not pressed by the complainants at the hearing. The Board's attention was particularly directed to certain rates alleged to be unduly preferential and unjustly discriminatory.

The rates filed with this Board provide for 18 cents per k. w. hr. with a discount of 5 per cent if paid by the fifth day of the month; on bills in excess of $10 a discount of 10 per cent is allowed. The officers and certain employees of the company are allowed a discount of 25 per cent; and the linemen, a discount of 66⅔ per cent on their bills if paid within the same time. One customer of the company had been allowed a discount of 25 per cent, but this discount the company states has been discontinued. The company endeavors to justify the unusual discrimination in favor of its officers on the ground they receive no salary or other compensation, but that is not a valid reason.

It has been repeatedly held that a director, stockholder, or employee of a utility company is entitled to no preference or advantage in the matter of the rate he is to pay for service. The

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only exceptions are those expressly made by statute. They should all be charged the regular rate. Matters of salaries and wages should be treated on a more businesslike basis than discrimination in rates for service. The Public Utility act of this state provides that no public utility shall make any unjustly discriminatory or unduly preferential rate, charge, or schedule for any service supplied or rendered by it; or make or give, directly or indirectly, any undue or unreasonable preference or advantage to any person or corporation, etc.

Under the prohibitions just referred to, the practice of allowing directors, officers, and employees different rates of discount than are allowed to other purchasers of electric current, is clearly illegal.

It is therefore ordered that the discrimination in favor of directors, officers, and employees of the company be discontinued. This order shall take effect August 9, 1915.

Board of Public Utility Commissioners, Ralph W. E. Donges, President; John J. Treacy, John W. Slocum, Commissioners.

SOUTH DAKOTA BOARD OF RAILROAD COMMISSIONERS.

IN RE WEBSTER TELEPHONE COMPANY.

[F-164.]

Valuation — Land — Unused property.

1. Only one third of the value of the land of a telephone company and the cost of construction of cement sidewalks thereon should be included in the valuation of the company's property for rate-making purposes, where it appears that the remaining portion was unoccupied, and located so as to be used for other purposes, and is not likely ever to be required for telephone purposes.

Valuation — Tools used during construction — City and rural telephone plant.

2. Tools used during the construction of a rural telephone plant do not constitute a proper charge in the capital account of the city plant, unless the rural lines pay to the city plant some rental charges for their use.

Depreciation — Accrued — Telephone — Six months' operation.

3. In the valuation of a telephone company for rate-making purposes, the value of a plant costing $23,541.72, which had been in operation a little over six months, was fixed at $22,750, the depreciation on

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such a plant beginning at the moment it is installed and put into operation.

Returns — Operating expenses — Insurance.

4. The cost of tornado and other insurance is a proper charge to the operating expenses of a telephone company, if such insurance is actually taken out.

Return — Operating expenses — Bad accounts.

5. A charge of a certain amount per month for bad accounts should not be allowed in the operating expenses of a telephone company, when the Commission allows it to make a rate of 25 cents in excess of the actual rates to be collected if bills are not paid on or before the 15th of each month.

Depreciation — Annual allowance — Necessity for.

6. In the making of a schedule or tariff of rates to be charged by a public utility, there must be an annual allowance for depreciation.

Depreciation — Definition.

7. Depreciation may be defined as the lessened money value caused by physical deterioration or lack of adaptation to function, and is occasioned by wear and tear due to the use in the service and age of the instrumentality, to obsolescence due to a change or development in the art requiring new and improved apparatus, to inadequacy of supersession caused by the growth of the business so that the old instrumentality is no longer adequate for the purpose of which it was intended, and must be superseded or replaced by a larger unit, and deferred maintenance due to lack or neglect of repairs necessary to preserve the apparatus in proper condition.

Depreciation — Rate — How determined.

8. The rate of depreciation must be determined after a careful inspection of the property, and must be considered in connection with its use.

Depreciation — Rate — How computed.

9. The rate of depreciation of the property of a telephone company should be computed on the wearing value, the scrap value, or the salvage value of the different units being deducted from their cost in place and the amount of the annual reserve for depreciation fixed by dividing the wearing value by the number of years representing the life of the plant.

Depreciation — Telephone plant — Annual allowance.

10. An annual allowance of 6 per cent for depreciation was held adequate for a telephone plant where there was very little probability of depreciation by reason of obsolescence and inadequacy or supersession.

Return — Reasonableness — Telephone plant — 7 per cent allowance.

11. In fixing the rates of a telephone company it was held that the dividends should equal an amount not less than 7 per cent of the plant.

Apportionment — Values — City and rural telephone service.

12. No part of the valuation of the rural lines of a telephone company should be charged to a city exchange, nor should any part of the valuation of the city exchange be charged to the rural lines in determining the reasonableness of the rate of the company for a city service, P.U.R.1915E.

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where a statute provides that rural telephone lines shall receive service at a city exchange upon the payment of 25 cents per month for each telephone instrument on the rural party line connected.

Service — Payment — Discount.

13. Permission was granted a telephone company to name a rate in its public schedule of 25 cents per month in excess of its regular rates, on condition only that if the telephone rates were paid on or before the 15th day of the current month in which service is rendered, a discount of 25 cents should be allowed.

[August 10, 1915.]

APPLICATION of telephone company for authority to increase rates. The valuation of the company's property for rate-making purposes was fixed at $22,750, and on this valuation the revenue from existing rates was found to be inadequate to provide for the necessary expenses of operation, including an annual allowance of 6 per cent for depreciation and a return of 7 per cent. The company was therefore authorized to put in effect the following schedule of monthly rates: Individual business, metallic circuit, $2.25; individual residence, metallic circuit, $1.25; desk sets, 25 cents; extension telephones, business, 50 cents; extension telephone, residence, 50 cents; extension bell only, 15 cents; extra user, business, $1.50; extra user, residence, $1; local calls from nonsubscribers .05 per message.

By the **Board**: In 1901 the city of Webster in Day county, this state, granted to Mr. Alexander Ross a fifteen-year franchise to operate a telephone exchange in that city. This franchise was subsequently assigned to the Webster Telephone Company, which was owned principally by Mr. John Williams and Mr. David Williams of Webster. Although this franchise would not have expired until 1916, a little over two years ago citizens of Webster urged the Webster Telephone Company to install a more up-to-date telephone system in that city. As the result of this request or agitation the city council of Webster on or about the 26th day of March granted to the Webster Telephone Company a new twenty-year franchise. Section 7 of that franchise reads as follows:

"The charges for monthly rentals and compensation for use of telephones shall be such as may be made by the State Railroad Commission less a discount of 25 cents per month on each tele-

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phone fee paid at the grantee's office by the 15th of the month in which the service is rendered."

After the granting of this franchise the Webster Telephone Company during the summer of 1914 commenced, and on or about the month of December of that year completed a new, modern, improved, up-to-date telephone exchange and system in Webster, including a new brick telephone exchange building and modern up-to-date 1500 multiple switch board, and all of the outside plant except the drop wires from terminal cans to subscribers' stations is cable construction. A part of the cable is underground in a concrete conduit. The plant was new in every particular except that 5,000 feet of wire which had been used in the old plant for a short time and one 40-foot pole were used in the new plant. The telephone instruments are of the latest and most improved construction. The drop wires from the cables or terminal cans to subscribers' stations are copperized. The new telephone plant includes everything that could be desired in the way of telephone construction in a city much larger than Webster, and its patrons should receive through it nothing but the very highest class of telephone service.

After the plant was fully completed, the Webster Telephone Company, agreeable to the provisions of § 7 of its ordinance, filed a petition with this board under the provisions of § 6 of the telephone law, which provides:

"No rate or charge for the transmission of any message or for any other service in connection with any telephone line or exchange shall be increased without the written consent of the Board of Railroad Commissioners entered in the journal of its proceedings"—for authority to increase its rates. In that petition the rates then being charged were set forth as follows:

Individual business, grounded circuit	$2.00	per	month
Party line business, " "	2.00	"	"
Individual residence, " "	1.00	"	"
Party line residence, " "	1.00	"	"

—and the company asked authority to charge, collect, and receive the following schedule of rates:

Individual business, metallic circuit	$2.75	per	month
Individual residence, " "	1.75	"	"
A discount of 25 cents per month off of the above rates if paid by the 15th of the month in which the service is given.			
Extension telephone, business	.50	"	"

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Extension telephone, residence	.50	"	"
Extension bell only	.15	"	"
Extra user, business	1.50	"	"
Extra user, residence	1.00	"	"
Local calls from non-subscribers	.05	per	call

The above rates to apply to that territory which is within three quarters of a mile of the central office in Webster, South Dakota.

Two hearings have been held, one at the city of Webster and the other at the offices of the Board. At the hearings the applicant was represented by Messrs. Anderson & Waddel, its attorneys, and Mr. David Williams, owner, and Mr. E. E. Michaels, manager. The city of Webster was represented by Mr. Lewis W. Bicknell, its attorney, and Mr. Frank Mohs, mayor of the city. Following the hearings, briefs were filed by counsel, and the cause submitted to the Board for consideration and decision.

Valuation.

Two valuations have been submitted, one by Mr. Michaels, the manager of the company under whose supervision the new plant was constructed, and one by Messrs. Cassill & Bierman of the force in this office. At the last hearing, also, there was submitted as a part of the record a statement of the plant accounts of the system as shown by its books. The company keeps its books in accordance with the accounting system promulgated by the Interstate Commerce Commission for class C telephone companies. The latter valuation is not different from the valuation submitted at the first hearing, except that there were some changes in and additions to the plant between the dates of the first and second hearings. The figures submitted are as follows:

Statement of Plant Accounts.

Account 210,	Land and buildings	$ 6,104.62
" 220,	Central office equipment	3,911.32
" 230,	Substation equipment	3,680.39
" 240,	Exchange lines	11,449.74
" 260,	General equipment	1,100.52
" 270,	Undistributed construction expense	416.25
	Total	$26,662.84

[1] Included in the item "land and buildings, $6,104.62," is an item for real estate of $1,500. It appears from the record that the Webster Telephone Company owns three lots in the city of Webster of which the value is about $1,500, and that of these three lots the telephone plant occupies a portion equivalent to one

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third, or one of the lots, the remaining portion being unoccupied and so located as to be used for any other purposes. It is not at all probable that any of the other real estate will ever be required in connection with the telephone plant. It would, therefore, appear that the only charge to this account for real estate should be $500. There is also included in this account a total charge of $101.81 for the construction of a cement sidewalk, and assuming that the cost of construction is the same for each of the three lots, two thirds of this item or $67.87 should be deducted and only $33.94 included in the items properly chargeable to the telephone plant. The testimony of Mr. Michaels, manager of the plant, also discloses that there should be made a further deduction of an item of $54 from this account, making the total deductions $1,121, and the item to be allowed for land and buildings $4,982.75.

[2] Included in the item, "account 260, general equipment, $1,100.52," is an item for tools amounting to $334.33, which were used during the construction of the plant, and are common not only to the city plant, but to the rural telephone system owned and operated by the Webster Telephone Company and radiating from its exchange in Webster. We have not before us any data from which we could make an assignment of the cost of these tools as between the plants, nor have we any information on which we could base a charge for the use of the tools to either plant. The company, in addition to reconstructing its city plant, is also reconstructing its rural lines, and inasmuch as the tools are being used in connection with the rural plant they do not constitute a proper charge in the capital account of the city plant unless the rural lines pay to the city plant some rental charge for their use. The item is a small one, and will make no difference whatever in the last analysis in the rates to be charged, but we deem it proper to deduct the item from the figures shown here, and consequently we have a general equipment figure of $766.19. Accepting the other figures of the company, there is produced a valuation of $25,201.64.

[3] The valuation made by Messrs. Cassill & Bierman is composed of the following items designated in the Interstate Commerce Commission's class C system of accounts for telephone companies:

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Account No.	200, Intangibles	$ 153.61
" "	210, Land & Buildings	6,043.92
" "	220, Central office equipment	4,366.07
" "	230, Station equipment	3,181.33
" "	240, Exchange lines	9,749.07
" "	260, General equipment	327.82
	Total	$23,821.82

In connection with this last valuation, all of the checks and vouchers and all invoices for the plant were carefully examined and checked against the inventory. This valuation was made after a careful and exhaustive examination of the entire telephone exchange system. Included within the item of $23,821,82, however, are two items aggregating $1,067.87, the value of the two extra lots and sidewalks for the same, and after deducting these items we have as a result of this valuation an item of $22,754.

The total checks, vouchers, and invoices submitted by the company as representing the cost of construction of its plant amounted to $26,150.99. In this amount is included the item of $1,067.87 referred to above and an item of $1,541.70 for accounts properly chargeable to general office expense, maintenance, maintenance of rural lines, rural line construction, and miscellaneous items not properly chargeable to the cost of construction of the city exchange. Deducting these two items, or $2,609.17, from the total amount of the vouchers and checks, or $26,150.99, we have an item of $23,541.72. This telephone plant has been in operation a little over six months. It is a fact that a telephone plant commences to depreciate the moment it is installed and put into operation. For the purposes of this case and fixing the rates to be charged for the future, after a careful and exhaustive examination of the evidence, we find and approve the valuation on this plant of $22,750.00.

Operating Expenses.

[4, 5] At the first hearing the manager of the company submitted an etimate of the monthly expense of the new plant. The first item is $125, operators' wages, which is approved. The next two items include manager's and lineman's proportion of salaries chargeable to the city exchange. The manager receives a salary of $125 a month and the lineman $65 a month, and these salaries, according to the testimony of the manager, are apportioned as

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between the city exchange and the rural lines on the basis of the number of phones in any class of service. In his testimony the manager says this is the customary way of apportioning the salaries to the two different classes of service, and that he believes this method to be a fair measure of the use of the lineman and of his supervision over the two systems. If, however, the method used by the manager be adopted, it will not produce the results which he has set down in his exhibit. The total number of telephones in the city are as follows:

Business telephones	95
Residence "	215
Pay stations	2
Making a total of	312

There are 238 rural telephone instruments in service. This makes a total of 550 telephone instruments. Apportioning the manager's salary on the basis of the number of telephone instruments in service at the city exchange assigns $70.90 to the exchange and $54.10 to the rural lines; and on the same basis the lineman's salary is assigned $36.87 to the city exchange and $28.13 to the rural lines.

The next item is for fuel, $20 per month or $240 per annum. We are familiar with the price of fuel for the heating plant installed in this exchange, and it should not exceed $12.50 per month or $150 per annum. There is also included in this estimate an item of $25 per month or $300 per annum for taxes. The taxes on the old plant for the year 1914 were $144, and in the operating expense account set up on the books of the company for the six months ending May 31, 1915, there is charged $15 monthly for taxes. This charge is merely an estimate, and at the time the taxes are paid would in all probability require correction entries on the books of the company; inasmuch as the taxes for the year 1914 were less than $150, we do not believe they will amount to $300 for the year 1915 and subsequent years. For the purpose of this case we allowed for annual charge for taxes $180. In these figures there are also included several items for tornado and other insurance, which would be perfectly proper charges, but no such insurance has ever been taken out. There is also included in this estimated monthly expense an item of $30 per month for removal and changes of telephone instruments. Dur-

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ing the first six months of its operation this item actually amounted to $14.88 or $2.48 per month. There are also included incidentals $15 per month, and under another head for postage, printing, stationery, etc., $12.50 per month, and cableman's expense $10 per month. One item for postage, printing, stationery, etc., of about $15 per month would be properly allowed, and the other items should be eliminated. An item of $8 per month is also included for bad accounts. If this Commission is to allow the company to name a rate 25 cents in excess of the actual rate to be collected if the rate is paid on or before the 15th of the month, the item for lost accounts should be eliminated.

At the last hearing the operating expenses for the first six months as shown on the books of the company appear as follows:

Bad accounts	$ .41
Taxes accrued	90.00
Account 600, Repairs to wire plant	19.80
" 610, Repairs to equipment	95.97
" 620, Station removals and changes	14.88
" 640, Other maintenance expense	46.76
" 650, Operators' wages	770.59
" 660, Other traffic expense	71.42
" 670, General office salaries	795.00
" 680, Other general expense	428.95
	$2,333.78

There must be some error in "account 650, operators' wages." The testimony shows that the operators' wages amount to $125 per month, and consequently for six months they would amount to $750, and not $770.59. On the basis of the computation for the assignment of the manager and lineman's salary, submitted by the manager of the company while on the witness stand, that is, on the basis of the number of telephone instruments in service on the city exchange and rural lines, account No. 670, general office expenses, $795, appears to be erroneous. The testimony of the manager is that these items were assigned on that basis. If this be true, the proper charge is $107.77 per month, and for six months $646.62. We do not say that this is a proper basis, and do not wish to be understood as determining that it is the correct method for the apportionment of the salary of the manager and lineman. The record shows, however, that the company claims to have assigned these salaries on the basis of the number of phones in service, and if they did so there is an error in this

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account. With these corrections and setting up the operating expenses on the yearly basis, we find the following amounts:

Taxes accrued	$ 180.00
Account 600, Repairs to wire plant	39.60
" 610, " " equipment	191.94
" 620, Station removals and changes	29.76
" 640, Other maintenance expense	93.52
" 650, Operators' wages	1,500.00
" 660, Other traffic expense	142.84
" 670, General office salaries	1,293.24
" 680, Other general expenses	857.90
	$4,328.80

Operating Revenue.

The number of telephone instruments in service within the city of Webster May 21, 1915, were as follows:

Class.	Old Rate.	No. of Phones.	Revenue.
Business telephones	$2.00	93	$2,232.00
Residence telephones	1.00	213	2,556.00
Extension telephones	.50	17	102.00
Extension bells	.15	10	18.00
Switching rural telephones	.25	238	714.00
Switching rural telephones	.25	47	141.00
Commission on toll messages			672.00
Total			$6,435.00

If we apply the operating expenses to this revenue, we find a balance of $2,106.20 out of which to make provision for reserves for depreciation and interest on the value of the property used and useful for the service of the public. The system of accounting under which this telephone company is operating provides for monthly or annual allowances to be made on the books of the company to cover the depreciation taking place in the plant and equipment. Account No. 185, depreciation reserve, provides for a credit to this account of such amounts as are charged monthly or annually to the expense account No. 630, "depreciation of plant and equipment," to cover the depreciation taking place in the plant and equipment, and account No. 630, depreciation of plant and equipment, provides for a charge to this account monthly or annually the estimated amount of depreciation accruing in the plant and equipment. These two accounts balance each other; what is credited to one must be charged to the other.

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[6] It is quite clearly established by the late authorities that in the making of a schedule or tariff of rates to be charged by a public utility there must be an annual allowance for depreciation.

Beale & W. Railroad Rate Regulation, 430 et seq.; Cumberland Teleph. & Teleg. Co. v. Louisville, 187 Fed. 637, 655; People ex rel. Jamaica Water Supply Co. v. State Tax Comrs. 196 N. Y. 39, 57, 89 N. E. 581; Pioneer Teleph. & Teleg. Co. v. Westenhaver, 29 Okla. 429, 38 L.R.A.(N.S.) 1209, 118 Pac. 354; San Diego Water Co. v. San Diego, 118 Cal. 556, 38 L.R.A. 460, 62 Am. St. Rep. 261, 50 Pac. 633; Cedar Rapids Water Co. v. Cedar Rapids, 118 Iowa, 234, 91 N. W. 1081 (1090); Knoxville v. Knoxville Water Co. 212 U. S. 1, 53 L. ed. 371, 29 Sup. Ct. Rep. 149; 1 Whitten, Valuation of Public Service Corp. pages 402 et seq.; Foster, Engineering Valuation of Public Utilities 147 et seq.; Floy, Valuation of Public Utilities, pages 168 et seq.; Hayes, Public Utilities, their Cost New and Depreciation, pages 133 et seq.

In Knoxville v. Knoxville Water Co. 212 U. S. 1, 53 L. ed. 371, 29 Sup. Ct. Rep. 149, the United States Supreme Court, considering the question of depreciation, said:

A water plant, with all its additions, begins to depreciate in value from the moment of its use. Before coming to the question of profit at all, the company is entitled to earn a sufficient sum annually to provide not only for current repairs, but for making good the depreciation and replacing the parts of the property when they come to the end of their life. The company is not bound to see its property gradually waste, without making provision out of earnings for its replacement. It is entitled to see that from earnings the value of the property invested is kept unimpaired, so that, at the end of any given term of years, the original investment remains as it was at the beginning. It is not only the right of the company to make such a provision, but it is its duty to its bond and stockholders, and, in the case of a public service corporation, at least, its plain duty to the public. If a different course were pursued the only method of providing for replacement of property which has ceased to be useful would be the investment of new capital and the issue of new bonds or stocks. This course would lead to a constantly increasing variance between present value and bond and stock capitalization,—a tend-

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ency which would inevitably lead to disaster either to the stockholders or to the public or both. If, however, a company fails to perform this plain duty and to exact sufficient returns to keep the investment unimpaired, whether this is the result of unwarranted dividends upon overissues of securities, or of omission to exact proper prices for the output, the fault is its own. When, therefore, a public regulation of its prices comes under question, the true value of the property then employed for the purpose of earning a return cannot be enhanced by a consideration of the errors in management which have been committed in the past."

As the amount set aside for annual reserves for depreciation, as well as the amount which shall be paid as a return on the value of the property used in performing the service, must be deducted from revenues and paid by the public receiving the service, the question of the proper determination of the rate of depreciation should receive the most careful consideration. A too high rate of depreciation, especially in those cases where the depreciation reserve may be invested in additions, betterments, and extensions, will conceal secret reserves or secret profits; and, conversely, a too low rate of depreciation may result in a partial destruction of the property. The line of demarcation between depreciation and maintenance is not clear, and the decision as to what constitutes maintenance and what depreciation, within certain prescribed limits, is more or less arbitrary. A high order of maintenance results in a lower depreciation, and, conversely, a low order of maintenance results in a higher depreciation.

[7] Depreciation may be defined as the lessened money value caused by physical deterioration or lack of adaptation to function, and is occasioned by wear and tear due to the use in the service and the age of the instrumentality, to obsolescence due to a change or development in the art requiring new and improved apparatus, to inadequacy or supersession caused by the growth of the business so that the old instrumentality is no longer adequate for the purpose for which it was intended, and must be superseded or replaced by a larger unit, and deferred maintenance due to lack or neglect of repairs necessary to preserve the apparatus in proper condition. Different rates of depreciation have been prescribed by this Board, by other Public Service Commissions and the

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courts, and range from 5 to 20 per cent of the original cost of the property in place.

[8] The rate of depreciation must be determined after a careful inspection of the property, and must be considered in connection with its use. In the plant in question we have what is commonly known as a brick fireproof building. For such a building various rates of depreciation have been fixed, ranging from 1 to 2 per cent. The Federal government makes an allowance of one to one and one-quarter per cent when occupied by the owner, and one to one and one-half when occupied by a tenant. In the construction of the plant at Webster there is between 400 and 500 feet of cable placed in concrete conduit in the streets, and as to the remainder of the plant it is all cable construction, the cables being formed of copper wires covered with a lead sheet, and the only open-wire work is copperized wire extending from the terminal cans to the subscribers' stations. The central office equipment consists of a 1,500 multiple switch board, wired to serve 400 subscribers, and with the addition of new jacks is capable of serving 1,500 subscribers and 40 rural lines. There is very little probability of depreciation in this plant by reason of obsolescence and inadequacy or supersession, and the depreciation which will take place will be that due to the natural wear and tear, the decrepitude of the plant, and deferred maintenance.

[9] In fixing the rate of depreciation it is our opinion that it should only be computed on the wearing value; in other words, that the scrap value or salvage value of the different units should be deducted from their cost in place and the amount of the annual reserve for depreciation fixed by dividing the wearing value by the number of years representing the life of the plant.

[10] In this case this has been done and the mean rate of depreciation obtained by dividing the total amount for annual reserves for depreciation by the value of the plant, which gives the rate of 5 plus, so that a rate of 6 per cent for depreciation, considering the character of this plant and the scrap value of its component parts, will, in our opinion, be sufficient.

[11] We think that the dividends should equal an amount not less than 7 per cent of the value of the plant. Applying these figures to the value, we produce the following result:

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Operating revenue under old rates		$6,435.00
Total operating expenses	$4,328.80	
Depreciation, 6 per cent on $22,500	1,350.00	
Dividends, 7 per cent on $22,500	1,575.00	
Deficit under old rates		818.80
	$7,253.80	$7,253.80

It clearly appears from the foregoing that if the Webster Telephone Company is to be allowed a fair rate of depreciation and a reasonable return on its investment, some part of its petition for an increase in rates must be allowed, and its revenue accounts will therefore be reconstructed on the following basis:

93	Business telephones @ $2.25 per month	$2,511.00
213	Residence telephones @ $1.25 per month	3,195.00
17	Extension telephones @ 50 cents per month	102.00
10	Extension bells @ 15 cents per month	18.00
	Switching 238 rural telephones @ 25¢ per month	714.00
	Switching 47 rural telephones @ 25¢ per month	141.00
	Commissions on toll messages at an average of $56 per month	672.00
	Total	$7,353.00

As previously shown, the operating expense, including the above allowance for depreciation and dividends, amounts to $7,253.80, leaving a net surplus of $99.20.

From the testimony in this record it quite satisfactorily appears that, with proper diligence, the Webster Telephone Company will be able to increase its subscriptions so that in a year or two the full capacity of the switch board as now wired, or approximately 400 subscribers, will be renting telephone instruments from it, and to this extent its revenues will be increased. In fact, this is the anticipation of the company.

[12] There has been some discussion in this case on the part of the company, that some part of the valuation of its rural lines should be charged to the city exchange, and, on the other hand, by the city that some part of the valuation of the exchange should be charged to the rural lines. Under the laws of this state rural telephone lines receive service at a city exchange upon the payment of 25 cents per month for each telephone instrument on the rural party line connected, and in establishing the revenue in this case it will be noted that it is on this basis the revenues and operating expenses and values have been computed. In other words, the operating expenses of a

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rural line connected with this local exchange and operated by the same company must be taken off of the back of the switch board, and the remuneration paid from the rural lines to the city exchange of 25 cents per telephone instrument included within the revenue item of $714.00, pays for all the value of the local exchange and telephone service received by the rural lines, and that no valuation either of the rural lines to the city exchange or of the city exchange to the rural lines should be made. The statute contemplates that this 25 cent switching fee for each telephone instrument pays for all the service received by the rural subscribers from the city exchange, and hence it is properly included in the exchange revenue.

[13] After a careful examination of all the testimony in this case, we are of the opinion and find that the Webster Telephone Company rates for the future, and until the further order of this Board in the premises, should be as follows:

Individual business, metallic circuit	$2.25	per	month
Individual residence " "	1.25	"	"
Desk sets	.25	"	"
Extension telephone, business	.50	"	"
Extension telephone, residence	.50	"	"
Extension bell only	.15	"	"
Extra user, business	1.50	"	"
Extra user, residence	1.00	"	"
Local calls from nonsubscribers	.05	"	message

—and that these rates should be made effective, commencing the fiscal year July 1, 1915, all rates to be paid on or before the 5th day of the current month, and that permission be granted to the telephone company to name a rate in its published schedules 25 cents per month in excess of the above-prescribed rates, on condition only that, if the telephone rental is paid on or before the 15th day of the current month in which the service is rendered, a discount of 25 cents per month shall be allowed. That these rates shall apply only within the corporate limits of the city of Webster.

As conclusions of law from the foregoing facts, the Board now hereby finds and decides:

CONCLUSIONS OF LAW.

That an order be made and entered in this proceeding, approving the schedule of rates last above set forth effective as of July 1, 1915.

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Done in regular session at the city of Pierre, the Capital, on this 10th day of August, 1915.

By order of the Board.

TEXAS COURT OF CIVIL APPEALS.

SARA IDA DAVIS et al.

v.

WATERTOWN NATIONAL BANK et al.

(— Tex. Civ. App. —, 178 S. W. 593.)

Constitutional law — Security issues — Approval of Railroad Commission.

1. A statute (chap. 14, art. 6727, vol. 4, Vernon's Sayles's Statutes [Tex.] 1914) declaring invalid every evidence of debt operating as a lien upon the property of railroad companies when unaccompanied by a certificate showing the approval of the Railroad Commission of such indebtedness is not unconstitutional as being in conflict with article 12, § 6, of the state Constitution, declaring that "no corporation shall issue stocks or bonds except for money paid, labor done, or property actually received."

Security issues — Liability of indorsers of notes issued without approval of the Railroad Commission.

2. Indorsers are not liable as accommodation makers of notes issued by a railroad company which were invalid and unenforceable against the company because issued without the approval of the Railroad Commission, as such notes were void *ab initio*.

Security issues — Approval of Railroad Commission — Due process.

3. A statute (chap. 14, art. 6727, vol. 4, Vernon's Sayles's Statutes [Tex.] 1914) declaring invalid every evidence of debt operating as a lien upon the property of a railroad company when unaccompanied by a certificate showing approval of the Railroad Commission of such indebtedness is not unconstitutional as depriving a holder of a note, issued by a railroad company without approval of the Railroad Commission, of his property without due process of law.

Security issues — Approval of Railroad Commission — Necessity of showing that Railroad Commission has assumed control of the company.

4. A note by a railroad company, secured by a lien upon its property, and issued without approval of the Railroad Commission, will be declared void without a showing that the Commission had assumed control of the company issuing the notes, where the control over the issuance of securities of railroads by the Commission is not optional with the Commission, the statute declaring it to be the duty of the Commission to ascertain the value of the franchise and property of each rail

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road in the state for the purpose of regulating and controlling the issuance of indebtedness; authorizing the Commission to approve liens or mortgages that may be given by railroad companies; making it the duty of railroad companies desiring to issue bonds or other indebtedness to be secured by lien on its franchise or property, to procure the consent of the Railroad Commission, and declaring invalid any such indebtedness issued without complying with its provisions.

Evidence — Burden of proof — Securities issues — Approval of Railroad Commission.

5. Under a statute providing that the Railroad Commission may decide that it will not assume control of suburban railways less than 10 miles in length, one claiming that a railway company that issued securities without the approval of the Railroad Commission was exempt from the control of the Commission has the burden of showing that the Commission had decided that the railway was a suburban railway less than 10 miles in length, and that it had decided not to assume control of such railway.

Waiver of defense in favor of one party — Effect.

6. A waiver of a valid defense in favor of one of the plaintiffs to the action does not operate as a waiver of such defense in favor of the other parties to the action.

[June 12, 1915.]

APPEAL by plaintiffs from a judgment of the District Court of Dallas County in favor of the defendants in an action against the maker and indorsers of notes alleged to have been issued by a railroad company without the approval of the Railroad Commission as required by statute; reversed and remanded.

Appearances: N. J. Wade, for appellants.

Rasbury, J., delivered the opinion of the court:

The record in this cause contains no statement of facts, in fact appellants state that no evidence, other than an agreement between certain of the parties which will be hereafter referred to, was introduced. Nor does the record contain briefs on behalf of appellees. Accordingly, we will found our decision of the case upon the issues presented in appellants' brief and assume appellees' acquiescence in all statements contained therein, as we are authorized to do by rules 40 and 41 prescribed for the guidance of this court by the supreme court (142 S. W. xiv).

From appellants' brief it appears that the pleadings in the court below disclosed the following facts: Appellee Glen Rose & Walnut Springs Railway Company issued a series of four notes, each for $2,500. Three of the notes were acquired by ap-

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pellants, Sara Ida Davis, Woodford M. Davis, and Dr. Francis M. Johnson, and one was acquired by appellee Watertown National Bank. Payment of the four notes was secured by trust deed and trust agreement, without preference to either note, upon the right of way and other property of the railway company. The notes were all indorsed by J. H. Farr and W. D. Morton. When issued the notes did not in fact represent a present consideration, but were negotiated with appellants and appellee Watertown National Bank before maturity, and for valuable consideration. The notes were in the usual form of negotiable promissory notes, and recited that their payment was secured by pledge of all the personal and real property described in the trust deed, and should be invalid unless a certificate attached to the notes was signed by the Guaranty State Bank & Trust Company, trustee. The certificate was so signed. The notes were not paid at maturity. Thereupon appellee Watertown National Bank sued on the note acquired by it, asking appropriate relief against the Glen Rose & Walnut Springs Railway Company, as maker, and Farr and Morton, as indorsers, and joining appellants therein on the ground that they were the owners of the remaining three notes and entitled to participate in the proceeds of the sale of the security. Others were made formal parties to the suit, but it is not necessary to detail them, nor the disposition made of them by the final judgment. Appellants adopted the pleadings of the Watertown National Bank, and declared, as well, independently upon their notes against the maker, and asked also for appropriate relief against the indorsers. Appellees Glen Rose & Walnut Springs Railway Company and Farr and Morton, among other pleadings, demurred to appellants' plea for affirmative relief on the notes, upon the ground that it appeared that the notes were secured by lien on the property of a proposed railroad, the issuance of which was not shown to have been approved by the State Railroad Commission failing in which they were, by law, void. In avoidance of the plea so urged appellants, by supplemental plea, averred that the Glen Rose & Walnut Springs Railway Company was a suburban short line of about 10 miles and, by law, exempted from the control and regulation of the railroad commission. The same defenses that were urged against appellants'

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notes were also urged by appellees Glen Rose & Walnut Springs Railway Company and Farr and Morton to the note and lien of the appellee Watertown National Bank, but were subsequently withdrawn, as will immediately appear. At trial the district judge sustained the demurrer to appellants' cause of action and dismissed same. Judgment was rendered for appellee Watertown National Bank against appellees Glen Rose & Walnut Springs Railway Company and Farr and Morton, for the amount due on its note, together with foreclosure of lien upon the securities named in the deed of trust. This judgment was based upon an agreement between said appellees that the defenses on the one side would be withdrawn in consideration that the parties on the other side would extend the time of payment.

[1] The first assignment of error is that the court erred in sustaining appellees' special exception to appellants' petition, because those provisions of the statute (chapter 16, arts. 6717-6732, vol. 4, Vernon's Sayles's Stat. 1914, popularly known as the stock and bond law), which invalidate every evidence of debt operating as a lien upon the property of railroad companies when unaccompanied by the certificate of the secretary of state showing the approval of the Railroad Commission of such indebtedness, are unconstitutional, because in conflict with § 19 of the Bill of Rights, declaring that no person shall be deprived of his property without due course of law, and are unconstitutional for the further reason that they are in conflict with article 12, § 6, of the state Constitution, declaring that "no corporation shall issue stocks or bonds except for money paid, labor done, or property actually received," etc. Discussing the issues in inverse order, we fail to see any conflict between that portion of the Constitution just quoted and the provisions of chapter 16 of the statutes. It was said in O'Bear-Nester Glass Co. v. Antiexplo Co. 101 Tex. 431, 16 L.R.A.(N.S.) 520, 130 Am. St. Rep. 865, 108 S. W. 967, 109 S. W. 931: That the purpose of the constitutional convention in enacting § 6 of article 12 "was to secure creditors, as well as stockholders, of corporations against the practice, which was too common, of corporations issuing fictitious stock and stock upon an insufficient consideration, whereby the actual capital was much less than the amount represented by the shares issued and sold by the corporation. The

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terms in which this section of the Constitution is expressed indicates the purpose that the assets of the corporation should be something substantial and of such a character that they could be subjected to the payment of claims against the corporation as well as to secure the shareholders in their rights in the capital stock."

The word "bonds," it will be observed, appears in the provision in the same relation as does "stocks," discussed in the foregoing case by the supreme court. Consequently the purpose of the section as construed by the supreme court as applied to stocks is necessarily the same as applied to bonds, that is, that they be not fictitious, but represent something substantial, *i. e.*, "money paid, labor done, or property actually received." Such being the purpose of the constitutional provision, it occurs to us that the provisions of chapter 16 are not only not in contravention thereof, but in entire harmony therewith, and are an almost necessary supplement to the constitutional provision in order to make it effective. While the constitutional provision directs that corporations, which include railroad corporations, shall not do the things therein prohibited, it contains no regulations or formalities relating to the issuance of stocks and bonds which will put upon notice and protect the prospective stockholder or creditor in case the corporation has not in fact observed the constitutional injunction. That is precisely what the provisions of chapter 16 do when they direct that stocks and bonds (notes) of railroad corporations not approved by the Railroad Commission and certified to in that respect by the secretary of state upon the bond shall be void. And whoever purchases the bond of a railroad company not properly certified has constructive notice of its invalidity. The effect of the rule is not dissimilar to the statutory rule with reference to one who purchases a negotiable note after maturity, or of one who purchases before maturity with actual notice. Accordingly no railroad corporation being permitted to issue bonds without observing the provisions of chapter 16, and the bonds acquired by appellants showing upon their face to be the bonds of a railroad company without such certificate, such fact was notice to appellants that they were void, even though acquired before maturity.

[2] In connection with what we have just said it is urged

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by appellants that even though the notes sued on were void and unenforceable as to the Glen Rose & Walnut Springs Railway Company, yet appellees Farr and Morton would be liable thereon as accommodation makers. We conclude not. Their liability was no greater than that of the makers, and is determined by the same rule. Being void *ab initio,* a subsequent indorsement could not impart vitality to them.

[3] On the issue that the stock and bond law is invalid because in contravention of the guaranty in § 19 of the Bill of Rights that appellants shall not be deprived of their life, liberty, property, etc., except by the due course of the law of the land, appellants do not specify in what particular that guaranty has been denied them. It does not appear to have been denied them at trial, since no complaint is made that the formalities of notice and a hearing were denied by the trial court. Hence we take it that the claim must relate to the enactment of the law itself. Our legislature, except where restrained by the Constitution of the United States, may exercise all legislative power not forbidden, expressly or by implication, by the provisions of our state Constitution. The enactment of the stock and bond law comes obviously within none of the limitations noted; and since it operates upon all alike, is impartial, and does not subject the individual citizen to arbitrary exercise of the powers of government, and affects the remedy rather than the right, the law in our opinion does not deny appellant the due process of law. March v. State, 44 Tex. 64; Armstrong v. Traylor, 87 Tex. 598, 30 S. W. 440; Nash Hardware Co. v. Morris, 105 Tex. 217, 146 S. W. 874.

[4] By the third assignment of error it is urged that the court erred in sustaining the exception noted, for the reason that no evidence was offered by appellees showing that the Commission had assumed control of the Glen Rose & Walnut Springs Railway Company, and in such connection it is asserted as a proposition that such control is optional with the Commission. We think it quite clear that the Railroad Commission is without option in such matters, save in the respect hereinafter mentioned. Article 6719, Vernon's Sayles's Stat., which is a part of the act creating the Railroad Commission, makes it the duty of the Commission to ascertain the value of the franchises, appurte-

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nances, and property of each railroad in this state, and make written report thereof to the secretary of state, the report of the Commission to remain in the office of the secretary of state as a public record, and as a limitation upon the issuance of indebtedness by the railroads of the state under the rules prescribed by succeeding provisions of the act. By article 6685, it is provided, among other matters, that the Railroad Commission is authorized and empowered "to approve liens or mortgages that may be given by such railroad companies and common carriers," etc. Article 6722 provides that should any such company "desire to issue bonds or other indebtedness, to be secured by lien or other mortgage on its franchises and property, in advance of the completion of the said railroad, it shall make application to and first procure the consent of the Railroad Commission thereto." Article 6727 provides that failure to comply with the preceding articles shall wholly invalidate any such indebtedness, etc. It thus appears that the matter in controversy in this suit is placed squarely and exclusively within the control of the railroad commission, with its duties definitely prescribed, and no presumption exists that the commission will exercise any option in the discharge of the powers and duties so conferred, particularly when such option is excluded by the article requiring it to value the property of the roads and report same to the secretary for the precise purpose of regulating and controlling the indebtedness thereof. Rather the presumption arises that they will carefully and consistently preserve all powers expressly or by implication conferred, among which are those enumerated in the articles cited.

[5] At this point, and in connection with what has just been said, we will consider the fourth assignment of error, which complains of the action of the trial judge in sustaining the special exception noted on the ground that appellants alleged in avoidance of said exception that the Glen Rose & Walnut Springs Railway Company was a proposed suburban railway about 10 miles in length, and one expressly excepted by law from the control of the Railroad Commission. This assignment should be sustained. Article 6731 of the act under discussion, in effect, permits the Railroad Commission to exclude from the operation of the several provisions of the act already quoted local suburban railways constructed for any distance less than 10

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miles from the corporate limits of any city or town, etc., and, when so excluded, said article 6731 provides that such suburban railway company shall have the right to issue its bonds, etc., free from the control of the Railroad Commission and without complying with the other provisions of the act, and when so issued such bonds, etc., shall be valid. This is the exception referred to in the paragraph of this opinion next above. Appellants, by their pleading as stated, averred that the Glen Rose & Walnut Springs Railway Company was such a suburban road as contemplated by the article quoted, and hence exempt from the control of the commission. The pleading standing as indicated, a question of fact was raised that could not be controlled by the demurrer. We do not, however, construe article 6731 to mean, as contended by appellants, that the Railroad Commission was without control whatever of the character of road indicated. Rather we construe it to mean that it may decide it will not assume control of such railroad after it has decided that such railroad is of the character claimed, and that, as a consequence, the litigant claiming the exemption would have the duty of showing, not that it was a suburban railway, but that the Railroad Commission had so decided. Denison & S. R. Co. v. Railroad Commission, 95 Tex. 671, 69 S. W. 62.

[6] It is also urged by the fifth and eighth assignments that the effect of the agreement between the appellees Glen Rose & Walnut Springs Railway Company, Farr & Morton, and Watertown National Bank, by which the former waived their defenses to the note and confessed judgment therein in consideration of the latter granting an extension of time for payment, was to in like manner waive such defenses to the notes sued upon by appellants. Such, in our opinion, was not the effect of the agreement. Legal remedies or defenses available to litigants are matters that may or may not be asserted; and a failure to exercise such remedy or defense in a given case, or an agreement to waive it for reasons sufficient to the one to be affected, would not, clearly, prevent the assertion of such right against another, even in the same transaction.

All other assignments not specifically discussed have been considered carefully, and, because we are of opinion that they show no reversible error, same are overruled.

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For the reason indicated the judgment of the court below is reversed, and the cause remanded for another trial not inconsistent with the views expressed herein.

Reversed and remanded.

Rehearing denied July 3, 1915.

WISCONSIN RAILROAD COMMISSION.

IN RE LIGHT AND WATER COMMISSION OF THE CITY OF BARRON.

Rates — Water — Flat rates — Objection to.

1. A flat rate for the sale of water is objectionable as permitting waste or reckless and unnecessary use by the consumer.

Rates — Preliminary analysis — Cost of operation.

2. The Wisconsin Commission, in making a preliminary analysis in a rate case, takes into account every possible detail without regard to the ultimate schedule to be determined, the aim being the determination of the true cost of operation.

Accounting — Municipal utility — Account receivable.

3. An amount due a municipal water utility from the city, constituting the difference between charges for water furnished the city and funds supplied by the city for extensions, should be listed under "accounts receivable" in the utility's assets on its balance sheet, and not under "depreciation reserve fund," and surplus should be listed as "city equity."

Rates — Water — Meter schedule — Minimum rate.

4. The minimum rate for water under a meter rate schedule was graduated according to the size of the meter, limiting the amount of water to be used under the minimum to the same amount for each size of meter.

Service — Water — Ownership of meters by utility.

5. It is desirable that a water utility, charging for water according to a meter-rate schedule, should own the meters, since divided ownership of equipment of such a utility does not result in the most effective service.

Rates — Water — Additional consumers on same meter.

6. The sum of $1 per quarter was held to be a proper charge for each additional consumer of water on the same meter.

Rates — Water — Fire service to city.

7. A charge of $1,392 per year for water furnished by a municipal waterworks for fire protection to a city of 1,500 inhabitants was held not unreasonable.

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Accounting — Separation of accounts of municipal utility from those of city.

8. A municipal water plant or electric plant should be treated as an enterprise, separate and distinct from the municipality itself, and the accounts kept accordingly.

Discrimination — Rates — Municipal utility.

9. A city operating its own water plant or electric plant should pay the utility at a reasonable rate for service rendered the city, and the utility should pay the city a reasonable amount as taxes and as interest on the city equity in the property of the utility, in order to avoid unjust discrimination in favor of either the taxpayers or the consumers.

Rates — Water — Meter-rate schedule — Change from flat rate.

10. A municipal water utility was authorized to install meters upon the premises of such consumers as it might see fit, and to charge according to a tentative meter-rate schedule established by the Commission, although the plant and other records and data did not furnish sufficient information for proper rate making, where it was claimed that flat rates to some consumers were inequitable or inadequate, and that the use of such rates had been abused; and where it appeared necessary that there should be an early decision, and that a tentative schedule should be established until proper records were kept and more accurate data would be available.

[August 2, 1915.]

APPLICATION of a municipal light and water commission for authority to adjust flat rates, install a meter rate, and to adjust its rules and regulations; adjustment of flat rates held unnecessary; schedule of meter rates adopted; rules and regulations prescribed.

The appearances are set out in the opinion.

By the **Commission:** Application has been received from the Light and Water Commission of Barron for authority to adjust its flat rates, and to install a meter rate, as well as to revise its rules and regulations. The hearing was held June 29, 1915. Mr. J. Rockman appeared on behalf of the petitioner.

The lawful rates now in effect are as follows:—

Public Service:	
Hydrant rentals 29 hydrants, each	$48.00 per yr.
Commercial service; charges per annum:	
Minimum rate $5.00 per service pipe per annum.	
Bakeries	5.00
Baths, public	1.50
Baths, private	1.50
Barber shops, three chairs	6.00
Barber shops, each additional chair	1.00
Barns, private	3.00
Barns, livery	15.00
Billiard and pool rooms	5.00
Butcher shops	6.00

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Churches	5.00
Dwellings	5.00
Each additional family	3.00
Halls	3.00
Harness shops	5.00
Hand laundries	6.00
Hotels—rates according to size	15.00 to 20.00
Milliners	3.00
Offices (when in buildings not specially rated), physicians	3.00
Dentists	2.00
Lawyers, for each person	1.00
Photograph galleries	6.00
Printers	5.00
Restaurants	5.00
Restaurants and bakeries	8.00
Saloons	10.00
Soda fountains, each	2.00
Stores, 4 persons	5.00
Stores, more than 4 persons	10.00
Tailor shops	5.00
Water closets (extra bowl $1.00)	1.50
Sprinkling lawns, time of sprinkling, 6 to 8 A. M. and 6 to 8 P. M.	3.00

One dollar will be added to the total charged, where the waste water or sewage is disposed of by any other means than by carrying out by hand.

In computing charges for periods less than one year, each month shall be calculated at one tenth of the annual rate, and fractions of months shall be counted as full months.

If water rent is not paid by the 15th day of March next succeeding the year in which water was furnished, service shall be discontinued, and not renewed until the amount due is paid.

The Light and Water Commission applies for authority to adjust the foregoing flat rates, and to install a meter rate, for the reason that it is impracticable to make a flat rate for many services which will be an equitable rate; that in some cases the right to use city water at flat rates has been abused; and that some flat rates are inadequate for the service rendered.

The Light and Water Commission wishes to substitute the following rates:

Public Service—no change in rate.

Commercial Service:

	Flat Rates per Year.
Bakeries	$ 5.00
Baths, public	1.50
Baths, private	1.50
Barber shops, 3 chairs	6.00
Barber shops, each additional chair	1.00
Barns, private, less than 5 head of stock	3.00
Billiard and pool rooms	5.00
Butcher shops	6.00
Churches	5.00
Dwellings	5.00

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Dwellings, each additional family	3.00
Halls	3.00
Harness shops	5.00
Hand laundries	6.00
Milliners	3.00
Offices, Physicians	3.00
Offices, Dentists	2.00
Lawyers, each person	1.00
Printers	5.00
Restaurants	5.00
Restaurants and bakeries	8.00
Soda fountains, each	2.00
Stores, 4 persons	5.00
Stores, more than 4 persons	10.00
Tailor shops	5.00
Water closets	1.50
Water closets (extra bowl)	1.00
Lawn sprinkling, 6 to 8 A. M. and 6 to 8 P. M.	3.00

One dollar will be added to the total charge to each service box, at flat rates where the waste water or sewage is disposed of by any other means than carrying out by hand.

No flat rate shall be less than $5 per year for each service pipe.

In computing charges for a period less than one year, each month shall be calculated at one tenth of the annual rate, and fractions of calendar months shall be counted as full months.

Meter Rates.

First 6,000 gallons, or less per quarter, 25¢ per 1,000 gallons.
Next 20,000 gallons, or less per quarter, 20¢ per 1,000 gallons.
All over 26,000 gallons, or less per quarter, 15¢ per 1,000 gallons.

Minimum Quarterly Bills.

⅝"	meter	$1.50	per quarter
1"	"	2.50	" "
1½"	"	3.00	" "
2"	"	5.00	" "
4"	"	25.00	" "

The municipality of Barron owns and operates a combined water and electric plant, the generating and pumping equipment being located in the same building and supplied with hydraulic power from the same power plant. An auxiliary gasolene-kerosene engine is held in readiness for stand-by service.

An examination of the reports for the two departments indicates that the records kept are not as complete for our purpose as a detailed analysis of operations requires. It has been found necessary to make a number of comparisons in order to get at as close an estimate as possible of what the proper expenses and operating statistics should be for a water plant of this size operating under conditions such as exist in Barron. It does not appear

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from the facts at hand that the total revenue of the water department can be reduced at this time. On the other hand, some requisite adjustment may be necessary between the classes of service furnished by the utility.

The usual procedure is to make a complete analysis of both the water and electric departments in order to determine the actual costs and efficiency of each class of service. However, the necessity for an early decision regarding water rates for metered service, which has been emphasized throughout the preliminary stages of this investigation, prevents us from making a thoroughly detailed study at this time. On the other hand, the fact that the plant records, both electric and water, are inadequate, would seem to indicate that a tentative schedule should be established at this time, and when meters are installed and proper statistical records are being kept, more accurate data will be available for a review and revision of such rates as are now instituted.

[1] The most important problem which arises in connection with a public utility is the adoption of a satisfactory system of rates. There are of course other problems arising, but they are less serious than the problem of determining an equitable rate. The flat rate is glaringly inadequate to allocate charges in an impartial manner. Such rates open up a possibility of waste or reckless and unnecessary use by the consumer, because the cost to him is determined only by the number of fixtures connected, and is not based on the water consumed.

[2] In making our preliminary analysis in each given rate case, every possible detail is taken into account without regard to the ultimate schedule to be determined, the aim being the determination of the true cost of operation.

[3] The following table discloses the balance sheet of the water department as reported to the Commission for the year ended June 30, 1914:

Balance Sheet.

Assets.

Property and plant:		
Cost first of year	$11,669.53	
Constructing, during year	663.80	
Cost close of year		$12,333.33
Depreciation reserve fund		6,304.31
Materials and supplies		43.86
Total		$18,681.50

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Liabilities.

Funded debt	$1,950.01
Depreciation, reserve	1,150.00
Notes and bills payable	150.00
Open accounts	916.01
Surplus	14,515.48
Total	$18,681.50

The above statement is manifestly incorrect in many respects. In the first place the cost of property and plant is less then half of the usual cost of plants of this size and character. The asset item, "depreciation reserve fund," is grossly in error. This item should be listed under the heading, "Accounts Receivable," as it consists of the balance due the utility from the city for hydrant rental charges. Of the surplus amounting to $14,515.48, all, or the greater portion, should be listed as "city equity."

As this utility has applied to the Commission for accounting assistance, the accounts and records of the water department and also of the electric department will be adjusted later in accordance with the accounting practices usually outlined by the Commission.

No appraisal was made of the Barron water and light plant; but the original cost of the waterworks property, it is believed, is not far from $35,000. A tentative inventory of equipment substantiates this figure.

Normal Operating Costs.—After reviewing the available data and taking into consideration the facts in the case, it is believed that fairly normal operating costs have been closely approximated. The results of this analysis are shown below.

Pumping	$1,129.65
Distribution	125.00
Commercial	60.00
Total Direct	$1,314.65
General	163.00
Undistributed	74.00
Total Above	$1,551.65
Taxes	250.00
Depreciation	450.00
Interest	1,125.00
Total	$1,825.00
Grand Total	$3,376.65

A tentative apportionment of the above expenses indicates that of the total about $2,099.43 are chargeable to general service and

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$1,277.22 to fire service. Local conditions must be taken into consideration in each case where data are available. Hydrant rental paid for the year ended June 30, 1914, amounted to $1,392, while earnings from general service totaled $2,123.30.

Operating Statistics.—The annual report of the utility for the period ended June 30, 1914, shows that there were a total of 227 unmetered water consumers connected at the close of the year. The reported total amount of water pumped during the year is only an estimate, and hence is not at all accurate. From testimony given at the hearing it appears, excluding slip in pumps, that the average daily pumpage is 145,000 gallons. On this basis the total for the year would approximate 53,000,000 gallons. This does not appear high for a community of the size of Barron, when comparisons are made with other cities of similar size and operating under somewhat similar circumstances. Even in cities where the larger proportion of consumers are metered, it is found that only from 40 per cent to 50 per cent of the total water pumped can be accounted for. In this instance probably only about 21,430,000 gallons are consumed, the balance pumped being lost or wasted.

It is the intention of the utility to meter about 50 of the largest consumers at once, and the remainder at some future date, so that it is necessary for us to estimate the probable amount of water that will be used by these consumers when changed from a flat rate to a metered rate basis. In view of the fact that the customers it is proposed to meter at this time are nearly all of the business class, and in view of the lack of information regarding fixtures, etc., and in view of the experience in cities of a similar size, we have estimated the total consumption by these consumers as about 5,400,000 gallons. The remaining number of consumers, excluding the railroad, will actually use approximately 7,000,000 to 10,000,000 gallons per year, through their flat-rate fixtures, while the railroad will consume about 4,000,000 gallons per year. These figures, we repeat, are only estimates, and experience may prove them in error. In the light of our observation elsewhere, however, we have adopted these figures as a probable index of consumption based on conditions in Barron.

In view of the situation found at Barron, and in view of the

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fact that the consumption by all consumers is an estimate, we believe that the situation does not call for a readjustment of the flat rates at this time.

[4] The utility has applied for a meter rate in which is incorporated a minimum charge. The serious disadvantage of the usual minimum bill for water consumers is that it allows a considerable amount of so-called "free water," and investigation shows that while consumers as a whole might be able to increase the total consumption materially, thereby increasing the amount of water pumped, the revenues might not be increased at all. Again, although the minimum bill schedule as outlined by petitioner does in a way recognize the fact that the investment, and therefore the fixed expenses per consumer, vary with the size of the service and meter installed, it provides for no limit to the amount of water to be used under the minimum for all sizes of meters alike, which step should be incorporated into a minimum bill water-rate schedule.

It has been difficult, due to lack of date, to design a schedule of water rates for Barron which would apply to the situation there, and not disturb conditions more than appears absolutely necessary.

This Commission has frequently established service charge rates in many of the cases which have arisen, and it should be noted that where a service charge is used, it does not act as a minimum bill, and does not allow any free water. In this case it is believed admissible to establish a minimum rate graduated according to size of meter, and to limit the amount of water to be used under the minimum to the same amount for each size of meter, thus introducing a schedule somewhat similar to a service charge schedule.

[5] It is our understanding that the utility will own all meters installed. This policy is recommended by the Commission as the most satisfactory, it having been determined that divided ownership of equipment of a water utility does not result in the most effective service.

It is believed that the following schedule of meter rates will meet the conditions at Barron, and supply sufficient revenue from

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that portion of general service affected to offset costs chargeable to this class of service:

General Service.

Meter Rates.

Minimum Charges:

¾" meter per quarter	$1.50
1" " " "	2.00
1½" " " "	2.50
2" " " "	3.00
3" " " "	5.00
4" " " "	10.00
	25.00

First 6,000 gallons per quarter for all sizes of meters shall be allowed to be consumed under the minimum charge.
Next 20,000 gals. per quarter—20 cts. per 1,000 gals.
Next 74,000 gals. per quarter—15 cts. per 1,000 gals.
All over 100,000 gals. per quarter—10 cts. per 1,000 gals.

[6] In determining charges to be made for additional consumers on the same meter, the fact must be recognized that certain meter costs become proportionately less per consumer when the number of consumers supplied through the meter is increased. It must be considered, however, that when more consumers are connected to the same meter, that the lower steps for rates as outlined in the schedule are reached sooner. In the present case the proper amount to be charged would seem to be $1 per quarter for each additional consumer.

[7] *Fire Service.*—In view of the facts discussed herein, we feel that the charge for fire service protection should remain about as at present, as a charge of $1,392 per year for fire service does not appear unreasonable for Barron.

If the relations between the city and the utility are to remain as they have been during the past, considerable uncertainty will exist as to the relative indebtedness of the city to the water department and *vice versa*. In the past the water department has charged the city with earnings from hydrant rentals. When the waterworks has to make extensions, etc., beyond the limit of funds on hand, said funds being obtained from earnings of general service, the city is called upon to furnish the money. The difference between the debits and credits to the city under this scheme is incorrectly shown in the balance sheet under the heading, "Depreciation Reserve Fund."

[8, 9] The Board of Water Commissioners has asked for the establishment of a different system of relationship between the

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Commission and the city in place of the conditional arrangements which now exist. It appears to be a good business policy to treat a municipal water plant or electric plant as an enterprise separate and distinct from the municipality itself, and to have accounts kept accordingly. If this policy is followed, the city should pay the utility at a reasonable rate for all service rendered the city, in order to avoid unjust discrimination in favor of the taxpayers of the city as against consumers; the utility, in turn, should pay the city a reasonable amount as taxes and as interest on the city's equity in the property of the utility, in order to avoid unjust discrimination in favor of the consumers as against the taxpayers. It naturally follows, also, that the city should provide all funds required for plant extensions, etc. These points were discussed very fully in Re Sparta, 12 Wis. R. C. R. 532, 535, (1913) and need not be elaborated further at this time.

Probable Revenue.—Because of the fact that we have no extended record of the number and character of fixtures in use by patrons of the water utility, it is impossible for us to state just how much revenue will be produced by any particular charge for service. It seems clear, however, that the expense involved in the ownership, operation, and maintenance of this waterworks will be fully met by the charges as outlined.

If the estimated consumption and distribution of meters can be taken as normal, the total revenue from general service for a year would amount to $2,937.44. The fact remains, however, that due to the necessity of making so many estimates in analyzing the premises in this case, the above calculation of probable revenue is liable to be somewhat in error in some respects.

It should be borne in mind that, with an increase in the number of metered consumers, conditions may vary materially, and it is therefore impossible, in view of present conditions, to devise a meter-rate schedule at this time which can be retained under a condition of practically universal metering, but the suggested schedule is of such form that adjustments can readily be made as conditions are found to justify such changes.

The rules and regulations of the water utility are shown below. Some slight changes have been introduced, in line with our experience with similar plants.

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Rules for Water Service.

On and after July 1, 1915, no water service will be connected with the city water mains unless an application therefor be made in writing to the Light and Water Commission and filed with the clerk of the Commission.

Such application shall be made by the owner of the property to be served, or by his duly authorized agent, on blanks furnished by the Commission.

Such application shall state:

1st. The location of the premises by lot and block, or other legal description.

2d. The names of owner and tenants.

3d. The use to which the water is to be put, including a list of all fixtures to be installed.

4th. That the applicant will be bound by all the rules and regulations governing the furnishing of water service.

5th. That the service will be retained for a period of at least one year next succeeding the date of connection with the mains.

When such application has been accepted, the clerk of the Commission will issue a permit, countersigned by the president, to the plumber selected by the applicant, authorizing him to do the work. The above rules shall also apply to any extension or alteration which may be made to any service already installed.

II. Within three days after completing the installation, extension, or alteration of any service, the plumber must furnish the clerk of the Commission a list of all the fixtures installed, when the water will be turned on by the agent of the Commission. All plumbing must be tested properly before the list above referred to is furnished the clerk, and for this purpose the water may be turned on, but it must be turned off again as soon as the test is made.

III. The water main shall be tapped at the expense of the Commission, by its duly authorized agent, and all pipes and fittings, up to and including the service box and necessary connections, will be furnished, installed, and maintained at the expense of the Commission. All service pipes and fixtures beyond the service box are to be furnished and installed by the consumer, and must be kept in good repair so as to prevent all un-

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necessary waste of water, and must be protected from frost at the expense of the consumer. No reduction in charges will be made for the time any service pipe may be frozen. Water running to prevent freezing is strictly prohibited.

IV. No consumer at flat rates shall permit the taking of water by persons other than occupants of the building served without payment of additional rates, and before furnishing such other person with water an application must be made to the Commission and a permit issued therefor.

V. No reduction will be made for fixtures not in use, nor for any time that the water may be turned off, unless application is made in writing to the clerk of the Commission, who will order the water turned off. Any service thus terminated will only be resumed on the written application of the consumer to the clerk of the Commission, who will order the water turned on.

VI. On and after the passage and publication of these rules and regulations, the Light and Water Commission of the city of Barron reserves the right to discontinue the furnishing of water at flat rates and order a meter installed on any service, where in its opinion, a flat rate is inequitable, or where the Commission has reason to believe water is being wasted, or an excessive amount used for the flat rate paid.

VII. Any consumer taking water at a flat rate may have a meter installed and thereafter take water at meter rates. No consumer taking water through a meter, whether by order of the Commission or upon its own motion, shall thereafter be permitted to return to the flat rate.

VIII. On and after July 1, 1915, no water will be furnished any hotel, boarding house, livery stable, feed stable, garage, store, or office building with more than two tenants using water, railroad, canning factory, steam-power boiler, dwelling using water as motive power for mechanical device, private barns with more than four head of horses or stock, and such other consumers as the Commission may thereafter designate, except through a meter.

IX. Meters will be furnished by the Commission, but all expense of installation must be paid by the consumer.

X. All meters must be placed in the basement of the building

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served, and as near as possible to where the service pipe enters the building. Where there is no basement, meters must be installed in a box, the location and design of which shall be determined by the Commission. Consumers must provide such receptacle or box, and make such other provisions for installation of the meter as shall be determined by the Commission. A check and waste shall be placed between the service box shut-off and the meter, and within 1 foot of the meter.

XI. Meters damaged by the frost or otherwise will be repaired by the Commission, the cost of such repairs, except when caused by ordinary wear and tear, shall be charged to the consumer, and will be added to his next quarterly bill, unless previously paid. No meter shall be removed or disturbed without permission being given by the Commission.

XII. The several members of the Light and Water Commission, or its duly authorized agents, shall, at all reasonable hours, have free access to all parts of the premises to which water is supplied, to make such examination and inspection as they may deem fit.

XIII. Annual flat rates shall be as follows:

(See schedule appended.)

XIV. Rates for metered water service shall be as follows:

(See schedule appended.)

XV. All rentals for water furnished at flat rates shall be payable and collected as heretofore.

XVI. All water meters shall be read on the first days of January, April, July, and October of each year, and bills rendered for the quarter. Such bills shall be due and payable upon presentation to the consumer, and if not paid within the month in which presented a penalty of 5 per cent of the amount due shall accrue, and a further additional penalty of 5 per cent of the amount due shall accrue for each and every month, or part thereof, thereafter while such bill shall remain unpaid. All bills due and unpaid on the first day of December in each year shall be certified by the clerk of the Commission to the city clerk, and by him charged in the tax roll against the various descriptions, where such water service has been furnished and collected in the same manner as other special charges.

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XVII. The taking or using the city water without complying with the foregoing rules and regulations is unlawful, and criminal proceedings will be instituted against any person or persons found guilty of violating the foregoing provisions.

To the "lighting rules and rates" as filed November 4, 1914, the board of water commissioners requests there be added three new sections, to read as follows:

9. Electric current for appliances used for heat, power, or for any other use than for light, where the total connected load of such appliances on any one service is 1,500 watts, or more, may be supplied at the rate for power service. The minimum charge for such installations shall be $1 per month for the first 750 watts connected or installed, and 75 cents per month for each additional 750 watts or fraction thereof.

10. Motors of a rated capacity of 2 h.p. or less, may be connected on the circuit and supplied with electric current at the same rate as for lighting and in connection with the lighting service.

11. All motors of rated capacity of more than 2 h.p. must be connected on the 220 volt circuit.

The Board of Water Commissioners has submitted the foregoing outline of certain rules and regulations for water service, as well as three additional rules for electric service, for which authority to place in effect is asked.

The following paragraphs should be included in the rules for water service:—

If a meter fails to register properly the amount of water which has passed through it, the amount of consumer's bill for the period shall be based upon the average quantity registered during the corresponding period of the three preceding years.

In buildings which are subdivided, each dwelling, flat, store, tenement, or other apartment separately used, shall be considered as a service in determining rates.

Only such persons as shall be authorized by the superintendent or the chief of the fire department shall be permitted to open any fire hydrant for any purpose whatsoever, and no one except such

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persons shall be permitted to take the hydrant wrenches, or suffer the same to be taken from any fire engine house, except for fire purposes.

CONCLUSIONS.

[10] As the records of this case have contained very few or none of the elements essential to proper computation, the figures, computations, or results which the Commission has adopted or determined must necessarily have been based upon its best judgment.

Other possible rates might be suggested, but as noted above there are no consumer or other important data available, so that it is impossible to predict exactly what would be the result of either the suggested schedule of rates or any other schedule, and finally it was agreed that rates should be established along the lines suggested herein, and if, after a fair trial and the collection of consumer data, etc., it appeared that the arrangement was inequitable, the Commission would make further investigation.

It is therefore *ordered* that the city of Barron as a water utility shall install meters upon such consumers as it may see fit, and shall charge for all water passing through meters according to the following schedule of rates:

Minimum Charges:

¾ inch meter per quarter	$1.50
1 " " " "	2.00
1½ " " " "	2.50
2 " " " "	3.00
3 " " " "	5.00
4 " " " "	10.00
Each additional consumer on the same meter	25.00
	1.00

Each dwelling, flat, suite, store, tenant, etc., shall be regarded as one consumer in determining the minimum charge.

Output Charges:

First 6,000 gallons per quarter for all sizes of meters shall be allowed to be consumed under the minimum charge.

Next 20,000 gals. per quarter, 20 cts. net per M gallons.
Next 74,000 gals. per quarter, 15 cts. net per M gallons.
All over 100,000 gals. per quarter, 10 cts. net per M gallons.

Flat rates shall remain as applied for by the Board of Water Commissioners.

No free service shall be given, and schools and other public buildings shall be charged for water service at the rates above stated.

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The city shall be charged for fire protection the sum of $1,392 per year.

Penalty.—The utility shall bill all metered customers quarterly. Penalty for nonpayment shall be 5 per cent applied as stated in the rules and regulations.

The rules and regulations as outlined in the discussion of this case for both water and electric service shall be placed in effect.

As soon as a meter is installed on any premises, the meter rate above ordered shall go into effect immediately.

Railroad Commission of Wisconsin, by Halford Erickson, Carl D. Jackson, Walter Alexander, Commissioners.

COLORADO PUBLIC UTILITIES COMMISSION.

ERNEST A. COLBURN

v.

FLORENCE & CRIPPLE CREEK RAILROAD COMPANY.

[Case No. 21.]

Evidence — Presumption — Rate voluntarily established — Discrimination against short haul.

1. It will be assumed that a commodity rate voluntarily established is not so low as to deprive the carrier of a fair return, in a proceeding attacking, as discriminatory, the same charge for transporting the commodity a shorter distance, so that the Commission, in finding the rate is discriminatory, will order a reduction for the short haul rather than an increase for the long haul.

Discrimination — Rates — Long and short haul — Mountainous territory.

2. The same commodity rate for a short haul as for a long haul was held discriminatory, although the mountainous character of the short-haul territory relatively increased the cost of such service, where such additional cost was less than the difference in rates that should exist between the long and the short haul.

[August 19, 1915.]

COMPLAINT that rates of the Cripple Creek & Colorado Springs Railroad Company for hauling ores from mines in the Cripple Creek district to a mill in said district, as compared to rates on the same class of ores to mills located at Colorado City, were

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discriminatory; upheld and defendant ordered to put into effect rates removing the discrimination.

The appearances are set out in the opinion.

By the **Commission**: On June 1, 1915, the complainant herein filed a complaint with the Commission, the principal allegation of which, and, in fact, the only one relevant, in the issues as made up, in this case, was the discriminatory rates charged for hauling ores from the various mines in the Cripple Creek district to the mill of the complainant, which is also located in the Cripple Creek district, as compared to the rates charged on the same class of ores to the mills located at Colorado City.

The defendant made answer thereto, admitting that the rates on ores from the Cripple Creek district to the complainant's mill were identical with the rates charged to Colorado City on all ores having a greater value than $20 per ton, but that the complainant enjoys a less rate than is maintained to Colorado City on all ores having a value of less than $20 a ton; admits that the distance from the mines in the Cripple Creek district to the mills at Colorado City is greater than to the mill of complainant. Avers that the complainant's mill is situated on one of the highest points in the Cripple Creek district, and, for this reason, as well as sidetrack and storage facilities at complainant's mill, heavy grades encountered in reaching complainant's property, and the general conditions surrounding operation of the railroad property to the plant of complainant, are such that it is possible to deliver only a few cars at a time; that in consequence of these conditions the cost of haulage and delivery is much greater in proportion than the cost of haulage and delivery of freight to other mills farther from the producing mines.

Avers that the system of computing rates in proportion to the value of ores is just and equitable, which system applies to complainant as well as to the mills at Colorado City, and that the present rate afforded to the complainant, on ores of $5 per ton or less in value, is not sufficiently remunerative to pay the defendant the actual cost of making delivery to the complainant's mill; further avers that the complainant has not and cannot be damaged by reason of said rates because of the fact that such

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rates are paid by the producer, or owner of the mine, and not by complainant, and prays to have the complaint dismissed.

After due notice to the parties, the Commission set the case down for hearing at its hearing room in the Capitol Building at Denver, on the 30th day of June, 1915, and testimony was taken; the complainant being represented by his attorney, N. Walter Dixon, Esquire, and defendant by its attorney, Ralph Hartzell, Esquire.

Owing to the fact that the defendant, the Florence & Cripple Creek Railroad Company, had dissolved its corporate existence after the commencement of this cause, and the property in question being operated by the Cripple Creek & Colorado Springs Railroad Company, the complainant asked leave to amend his complaint to show the Cripple Creek & Colorado Springs Railroad Company to be the defendant in this case. No objections being made by the parties in interest, the request was granted by the Commission.

The taking of testimony having been completed, the cause was set down for argument, and, on August 17, 1915, the attorneys for the interested parties appeared and made oral argument before the Commission. Prior to that time, and subsequent to the taking of testimony, the Commission made a personal inspection of the operating conditions in the Cripple Creek district.

It appears from the record that the defendant, the Cripple Creek & Colorado Springs Railroad Company, is charging, demanding, and collecting the following rates on ore from the Cripple Creek district to points as shown below:

Rates on Ore, Carloads, in Cents per Ton, Between Cripple Creek District, and

Valuation to—	Cripple Creek District.	Colorado City.
$5.00 per ton	$ .50	....
20.00 " "	.75	$1.00
25.00 " "	1.25	1.25
30.00 " "	1.50	1.50
40.00 " "	2.00	2.00
Over $40.00 per ton	2.50	2.50

---and that the distance from Cripple Creek district to Colorado City is approximately 45 miles, and the distance from the mines in the district to complainant's mill varies from 5½ to 11 miles.
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While there is considerable difference in the mileage, there is also, of necessity, considerable difference in the method of operation as between cars destined to complainant's mill and the mills at Colorado City. Cars destined to Colorado City are assembled at a convenient point and sent out of the district in train lots, while cars destined to complainant's mill are handled singly or in small lots, and moved entirely by switching crews.

The evidence, which is corroborated by personal inspection made by the Commission, shows that switching operations in this district are attended by considerable hazard and heavy expense, occasioned by the mountainous character of the territory, with switchbacks, severe curves, circuitous routes, and heavy grades, with the result that a very limited amount of tonnage can be handled with one engine. Mr. Cogan, superintendent of the defendant company, submitted a detailed statement showing the average cost of switching freight in the district to be 72 cents per ton. The same witness testified that while he believed the switching service could be performed at a cost slightly less than the cost of transporting a shipment to Colorado City, nevertheless it was more satisfactory and less trouble to perform the road service. He also testified that it was his opinion, based on the cost of the service, that there should be a slight differential between the rates in favor of the mills in the Cripple Creek district.

[1] The complainant in this case is not attacking the rates to Colorado City; on the contrary he indicated that the Colorado City rates were fair and reasonable, while the defendant maintains that the rates to that point are too low, and should be advanced. In view of the fact that the rates to Colorado City were voluntarily established by the defendant, without action on the part of this Commission, the Commission will take the position that the rates to that point are not so low as to deprive the defendant of a fair return for the service rendered.

[2] The record in this case discloses the fact that there is little actual difference in the cost of the service rendered by the defendant company as between shipments from the Cripple Creek district destined to the complainant's mill, and shipments from the same district to the mills at Colorado City. However, there is some difference, which is favorable to the contention of the complainant, and witnesses for the defendant admit that

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there should be a differential in the rates in favor of the mills in the district, based on the relative cost of the service performed. The Commission is inclined to this view, and an order will be entered in accordance therewith.

The Commission finds that the rates on ore, as set forth in the order, are just and reasonable, and all rates now charged by the defendant, in excess of those set forth in the order, are unjust and unreasonable.

ORDER.

It is hereby ordered that the defendant, the Cripple Creek & Colorado Springs Railroad Company, be and it is hereby ordered to cease and desist from charging, collecting, or demanding their present published rates on ore of greater value than $20 per ton, from mines in the Cripple Creek district to the mills in said district; and the said defendant is further ordered to publish, in lieu thereof, rates from the various mines in the Cripple Creek district, to mills in said district, which shall be 25 cents per ton lower than the rates charged, demanded, and collected, on the various grades of ore, by the defendant carrier from the Cripple Creek district to the mills at Colorado City.

This order shall become effective on or before September 19, 1915.

The Public Utilities Commission of the State of Colorado, S. S. Kendall, Geo. T. Bradley, M. H. Aylesworth, Commissioners.

IDAHO PUBLIC UTILITIES COMMISSION.

INHABITANTS OF McCAMMON

v.

SARAH HARKNESS, Admrx., et al.

[Case No. F-85; Order No. 265.]

Service — Water — Municipal supply — Quantity.

1. As it is the duty of a water company undertaking to furnish a municipality and its inhabitants with water to furnish a sufficient quantity adequately to provide for the needs of the municipality and its inhabitants, it will be enjoined from diverting the water and applying it

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for irrigation or any other purpose when it interferes with the supply necessary for the needs of the municipality and its inhabitants.

Service — Water — Municipal supply — Pressure for fire protection.

2. A water company furnishing a village water for fire protection must provide pipes of ample size leading from the source of supply to the main reservoir to furnish sufficient pressure for fire protection at all times.

Service — Water — Municipal supply — Pressure for fire protection.

3. A water company furnishing a village with water for fire protection should make arrangements for carrying off the surplus water at the reservoir when it becomes full, to avoid the necessity of opening the fire plugs in the village or the shutting off of the intake at the reservoir, when it can be remedied by the expenditure of a small amount which will greatly increase the efficiency of the plant.

Service — Payment — Cutting off water supply for refusal to pay bill.

4. A water company should not turn off the supply of water for an entire street to compel an individual customer on the street to pay his water bill.

Service — Water — Municipal supply — Waste.

5. It is the duty of a water company furnishing the inhabitants of a municipality with water to enforce the rules governing the use of water to avoid waste of the water supply.

Service — Municipal supply — Waste.

6. It is the duty of the consumers to comply with the rules governing the use of the water supply to the end that a sufficient water supply may be preserved for all purposes.

[August 23, 1915.]

COMPLAINT by inhabitants of McCammon against Sarah Harkness, as administratrix of the estate of H. O. Harkness, deceased, and Sarah Harkness as public utility, supplying the village of McCammon and its inhabitants with water, on account of alleged unreasonable arbitrary and unwarranted practices in the operation of the waterworks; order directing the utility to desist from diverting water for irrigation or other purposes when it interferes with the water supply necessary for the needs of the municipality and its inhabitants; to make certain improvements to provide for ample pressure for fire protection at all times; to stop the practice of shutting off the water supply to compel payment of water bills when it interferes with the supply of other consumers not in arrears; and to enforce rules govering the use of water by the consumers to prevent waste.

The appearances are set out in the opinion.

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By the Commission: Several written complaints were filed with the Commission against one Sarah Harkness, as administratrix of the estate of H. O. Harkness, deceased, as manager of the water company furnishing water to the village of McCammon. These complaints were of such character that the Commission on the 3d day of June, 1915, made an order directing the attorney general of the state of Idaho, he being the attorney for this Commission, to prepare and file with this Commission a complaint against the said Sarah Harkness as administratrix of the estate of H. O. Harkness, deceased, with the view of having a public hearing upon said complaints.

On June 4, 1915, a complaint was prepared and filed by Joseph H. Peterson, as attorney general for the state of Idaho, against the said Sarah Harkness, as administratrix of the estate of H. O. Harkness, deceased, and Sarah Harkness in her individual capacity. This complaint alleged that the said Sarah Harkness was the duly appointed, qualified, and acting administratrix of the estate of H. O. Harkness, deceased; that the said H. O. Harkness died at McCammon, state of Idaho, on the 5th day of April, 1911, and that prior to his death, the said H. O. Harkness, and the said Sarah Harkness, husband and wife, were the owners in possession of a certain water system furnishing water to the inhabitants of the village of McCammon for domestic, culinary, and other purposes. The complaint further alleged several specific charges of omission and commission by the said Sarah Harkness, in the operation of the said water system, the principal charges being that she failed and neglected to develop from Crystal Springs, the source of said water supply, a sufficient quantity of water to adequately provide for the needs of the said village of McCammon and its inhabitants, notwithstanding the fact that the flow of said springs is ample, if properly developed and cared for, to supply the needs of the said inhabitants; that during the summer months she conducted the water from the springs to a reservoir through an open ditch; that she failed to flush the dead ends of certain mains and laterals within said village, thereby causing said water to become contaminated and unfit for use; that she permitted fire hydrants and fire plugs to become rusted and out of repair so that in case of fire the same became impracticable to use

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and as a result the inhabitants were not given proper and adequate fire protection; that she diverted, during the dry season, certain portions of the water for irrigation purposes, which should have been used for domestic purposes, thereby causing a shortage in said village; that by reason of certain other arbitrary and unreasonable rules and practices she constantly harassed the citizens and prevented them from obtaining water which they were duly entitled to.

An answer was filed to the above complaint by Sarah Harkness, as administratrix of the estate of H. O. Harkness, deceased, and also in her individual capacity, severally denying each of the allegations contained in the complaint.

E. G. Davis, Assistant Attorney General of the State of Idaho, appeared as attorney for the complainant, and D. C. MacDougal and E. C. White appeared as attorneys for the defendant.

The case was set for hearing on Thursday, July 15, at 1:30 P. M. at McCammon, at which time and place a hearing was had and evidence introduced by both parties.

No complaint was made, either in the formal complaint filed or at the hearing, in regard to the reasonableness of rates charged by the defendant, but the hearing was directed against the unreasonable, arbitrary, and unwarranted practices of the defendant in the operation of the utility. We shall therefore make no further mention of the question of rates, except to state that at the time of this hearing no schedule of rates was filed by Mrs. Harkness for the village of McCammon, and the further fact that the Commission of its own motion ordered H. H. Miller, accountant for the Commission, to examine the books and records of the defendant to ascertain the status of the same. From such examination it appears that the gross operating revenues amount to something like $960 per annum, while the gross operating expenses, including a 6 per cent return on the investment, and including a depreciation charge of 3 per cent, amount to something over $1,790 per annum. From the above it would appear that a further investigation into the rate question would serve no useful purpose in this hearing.

It appears from the evidence that the water for said village of McCammon is obtained by an appropriation of the waters of what is known as Crystal Springs, situated about 5 miles from the

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village of McCammon, the waters of said springs being conducted to a reservoir situated about 1 mile distant from the said village of McCammon, and thence from said reservoir to the said village of McCammon, where it is distributed by means of the mains and laterals laid through a portion of the streets and alleys of said village. It also appears that there is a 2-inch pipe running from the springs to the reservoir direct, also another 2-inch pipe from the springs to a reserve reservoir which is located above the main reservoir and a 2-inch pipe from the reserve reservoir to the main reservoir, and that there is a 4-inch pipe from the main reservoir to the said village mains. This reserve reservoir, however, was some few years ago abandoned by reason of unsanitary conditions, and the water is now taken direct through said *two* 2-inch pipes from the springs to the main reservoir.

[1] It appears from the evidence that there is sufficient water for the use of the inhabitants of the village of McCammon provided the same is not diverted by the defendant for irrigation purposes; and provided, further, that the citizens do not misuse the water for lawn purposes by permitting the same to waste through open hose. It appears, however, from the evidence that the defendant, during the irrigation season, diverted water for irrigation purposes which should have properly been used and preserved for the use of the citizens of McCammon. On the other hand, it was also disclosed that the citizens misused the water for sprinkling purposes by permitting the hose to run openly without a nozzle, thereby wasting the supply.

[2] Several difficulties arose by reason of the construction of the system; one is that the *two* 2-inch pipes flowing from the springs to the main reservoir are not large enough, as compared with the 4-inch pipe leading from the main reservoir to the village. It requires no extended argument to show that if the 4-inch pipe leading from the main reservoir to the village is left open, it only means a question of a short time until the reservoir is drained, thereby removing all pressure which is necessary for fire protection. This matter could be remedied by increasing the size of the pipes leading from the springs to the main reservoir.

[3] It also appears that there is no proper arrangement made for carrying off the surplus water at the reservoir when the same

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becomes full; that in order to take care of this it is necessary to open the fire plugs in the village, thereby losing the pressure in case of fire, or for some person to walk to the main reservoir and shut off the intake. It seems to the Commission that this matter could be remedied by the expenditure of a slight amount which would greatly increase the efficiency of the plant.

[4] Evidence was introduced showing that the defendant, for the purpose of enforcing collections, occasionally would turn off the supply of water for an entire street when some particular customer on that street refused to pay his or her bill. This practice should not be resorted to, for the reason that it penalizes and works an injustice upon all the customers in that vicinity, when the sole object is to enforce a remedy against an individual.

[5, 6] The complaint was made by the defendant at the hearing that the inhabitants of the village of McCammon misused the water for sprinkling purposes. As heretofore stated, no schedule of rates or rules and regulations up to the time of the hearing had been filed by the defendant, governing the use of the water, and for that reason the citizens were unaware of when or how water for sprinkling purposes could be used. However, since the hearing was had in the said above-entitled cause, said defendant has filed a schedule of rates, together with rules and regulations. When such rules have been approved by this Commission, it is not only the right, but the duty, of the defendant to see that such rules are enforced, so that an ample water supply may be preserved during all seasons. It is also the bounden duty of each and every customer of the defendant, in his own interests, and in the interests of the public, to see that such rules are complied with, and it is the hope of the Commission that the inhabitants of this village will co-operate with the management for the purpose of seeing that such rules are observed, so that a sufficient water supply may be preserved for all purposes.

At the hearing it developed that there was a considerable bitterness existing between the defendant on the one hand, and the inhabitants of the village of McCammon on the other; this has been occasioned by charges and countercharges being made, which have resulted in ill-feeling generally in the community. It would serve no good purpose for us to elaborate upon the specific charges,

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but we wish to impress upon the defendant that she owes a duty to the public by reason of the fact that she is operating a utility.

It is therefore *ordered* that the defendants, Sarah Harkness, as administratrix of the estate of H. O. Harkness, deceased, and Sarah Harkness, in her individual capacity, do refrain and desist from, in any manner, interrupting the supply of water to the said village of McCammon and its inhabitants, or from diverting the same from the said uses, and applying the same to any other uses whatever, except any surplus water which may not necessarily be used in supplying the needs of the inhabitants of McCammon.

NEBRASKA STATE RAILWAY COMMISSION.

W. J. SCOUTT et al.

v.

NEBRASKA TELEPHONE COMPANY et al.

[Formal Complaint No. 274.]

Monopoly and competition — Consolidation of telephone companies — Anti-trust act — Agreement with Federal authorities.

Upon petition of citizens of a city in which duplicate and competing telephone service was maintained by two companies, the Nebraska Commission authorized a consolidation, by the purchase of the property of one of the companies by the other, notwithstanding the purchasing company was bound by agreement with the Federal authorities under the United States anti-trust law, not to purchase the property of any competing telephone company, it appearing that the interstate service affected would be negligible, that the consolidation would be in the interest of the public welfare, and that the purchasing company had sold approximately 20,000 subscriber stations to competitors as against approximately 6,000 acquired.

[August 11, 1915.]

COMPLAINT of citizens of the city of Kearney of the expense and inconvenience arising from the duplication of telephone systems, asking that the two companies furnishing telephone service in that city be required to consolidate. Both companies were willing to consolidate, but one of them was bound by agreement with the Federal authorities through the American Telephone & Telegraph Company not to purchase the property of any telephone

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company in competition with it; consolidation permitted notwithstanding said agreement.

Appearances: John M. Dryden and H. M. Sinclair for complainants; Edgar M. Morsman, Jr., for Nebraska Telephone Company; Warren Pratt for Kearney Telephone Company.

Clarke, Chairman: The citizens of the city of Kearney are supplied with a duplicate telephone service by the Kearney Telephone Company, having some 1,450 subscribers at Kearney, 212 of which are farm lines for which they do the switching, and the Nebraska Telephone Company, having about 800 subscribers. There is a duplication of approximately 250 phones in the entire city exchange.

In addition to the above, the Kearney Telephone Company operates exchanges at Overton, Riverdale, and Sumner, and toll lines extending west to Overton, Lexington, and across to Sumner, and from Kearney to Callaway through Amherst and Miller, together with a considerable number of farm lines at Overton and Sumner.

The Nebraska Telephone Company owns and operates practically all of the toll lines south of the Platte west of Adams and Webster counties, and likewise practically all of the long distance lines, with the exception of a few lines in the North Platte territory.

The complainants herein, citizens of Kearney and patrons of the two companies, for and on behalf of themselves and others similarly situated, complain of the expense and inconvenience arising from the duplication of telephone systems, and ask that the said companies be required to consolidate.

The Nebraska Telephone Company in its answer admits that two telephone exchanges in the same place are an unnecessary burden upon the inhabitants thereof; that it is willing to purchase and acquire the Kearney Telephone Company at a fair figure, if permitted so to do, and if such purchase is not illegal under the anti-trust laws of the United States and in violation of a certain agreement entered into with the Federal authorities through the American Telephone & Telegraph Company, whereby this company agreed to purchase the property of no telephone company, where such telephone company is in competition with respondent,

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and that in view of said agreement it cannot purchase the property of the Kearney Telephone Company unless respondent is assured that such purchase will not be considered as constituting a violation of said agreement made by the American Telephone & Telegraph Company with the Federal authorities.

Respondent further alleged that, in addition to the local exchange at Kearney, it owns and operates other telephone exchanges located in all the important towns of Nebraska and South Dakota; that it has invested large sums of money in long-distance and toll-telephone lines, which connect all the exchanges operated by respondent, and likewise many other exchanges located in towns where respondent has no exchange, and that by means of said long-distance and toll lines respondent is able to furnish to the city of Kearney and the state of Nebraska telephone service to practically every town in the United States.

Respondent further alleges that in connection with its telephone exchange located at Kearney it operates and maintains a toll switching station and toll switch board, and to properly operate its toll and long-distance lines it must at all times maintain in said city of Kearney a toll switch board and a large force of operators and men sufficient to properly take care of its toll and long-distance lines which pass through and radiate from Kearney.

Respondent the Kearney Telephone Company, by way of answer, likewise admits the burdensome nature of a duplicate telephone system, and alleges that it is willing to sell and dispose of its said exchange and system to the Nebraska Telephone Company for a fair price, and that the said defendants can agree, if permitted, upon a price therefor. It further alleges that it is unable itself to finance the purchase of the local exchange of the Nebraska Telephone Company, even if said company were disposed to sell the same, and that in order to comply with the complaint it will be necessary for it to sell its property and system to the said Nebraska Telephone Company, and that its stockholders and board of directors have authorized the board of directors to sell and dispose of same to the Nebraska Telephone Company.

Upon proper notice given, a hearing was had in the city of Kearney on June 4th. It appears from the evidence that there has been and is an almost universal demand from the citizens of

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Kearney for the proposed consolidation. A large petition demanding same was introduced in evidence; likewise, resolutions of the Commercial Club and the city council of Kearney recommending and demanding same. That the matter had received full consideration by the patrons of the company and the citizens of Kearney is evidenced by the minutes of three meetings held by the Kearney Commercial Club, and the files of the various papers published in Kearney, introduced in the record. A considerable number of the most prominent citizens of the city, including the judge of the district court, none of whom had any financial interest in either company, testified that in their opinion the demand was almost universal, if not unanimous. The only remonstrance received by the Commission in regard to the proposed consolidation was filed by one of the officers of the Union Valley Telephone Company, a farm line switched by the Kearney Telephone Company. This party failed to appear at the hearing, but the secretary and manager of his company did appear, and testified that in his opinion it would be more convenient and a benefit to the city and country.

In addition to the added expense, the usual annoyances and inconveniences incident to a duplication of telephone exchanges in the same town exist in the usual, if not in an aggravated, form at Kearney, and it is unnecessary to cite them in detail. In addition thereto is the added expense which said duplication places upon the local electric light plant and the added risk in which the citizens of Kearney are placed by reason of the greater possibility of a short circuit occurring in the distribution systems of respondents with the high voltage transmission lines of said electric light company.

It further appears from the evidence that if a consolidation is to be effected, now or in the future, the present is most opportune, inasmuch as the Kearney Telephone Company had contemplated, and is preparing in the event that consolidation is not effected, to put in an entirely new switch board in the central office, to change from magneto to common battery, and to make considerable extensions involving more or less cable installation.

The evidence also shows that the gross earnings of the Kearney Telephone Company for the calendar year 1913 from interstate toll business, including commissions on business originated by it,

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amounted to $2.82, or .07 of 1 per cent of its entire net toll business; that of the $2.82 interstate toll earnings, but 6 cents, or 2 per cent thereof, was earned through independent toll-line connections. The remainder thereof, *viz.*, $2.78, or 98 per cent, was earned through Nebraska Telephone Company connections. That the gross earnings of the said company for 1914 from interstate toll business, including commissions on business originated by it, amounted to $1.74, or .05 of 1 per cent of its entire net toll earnings; that of the $1.74 interstate toll earnings, 87 cents was earned through independent toll connections, and the remainder thereof, or 87 cents, was earned through Bell connections. It would therefore appear that the interstate business of the Kearney Telephone Company is so insignificant as not to merit consideration, when one considers the added expense and great annoyance and inconvenience to which the patrons of the two companies at Kearney are subjected.

In view of the inability of the Kearney Telephone Company to finance the purchase of the Nebraska Telephone property, and the unwillingness of the latter to sell its property by reason of the necessity of maintaining in Kearney operators and maintenance crews for its long-distance lines, and the further fact that the latter company was the first to locate in Kearney, it would appear that the only logical solution of the question is the purchase of the Kearney Telephone Company by the Nebraska Telephone Company.

The section of the agreement entered into between the American Telephone & Telegraph Company and the Federal authorities is as follows:

"Neither the American Telephone & Telegraph Company nor any other company in the Bell system will hereafter acquire, directly or indirectly, through purchase of its physical property or of its securities or otherwise, dominion or control over any other telephone company owning, controlling, or operating any exchange or line which is or may be operated in competition with any exchange or line included in the Bell system, or which constitutes or may constitute a link or portion of any system so operated, or which may be so operated in competition with any exchange or line included in the Bell system.

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"Provided, however, that where control of the properties or securities of any other telephone company heretofore has been acquired, and is now held by or in the interest of any company in the Bell system, and no physical union or consolidation has been effected, or where binding obligations for the acquisition of the properties or securities of any other telephone company heretofore have been entered into by or in the interest of any company in the Bell system, and no physical union or consolidation has been effected, the question as to the course to be pursued in such cases will be submitted to your department and to the Interstate Commerce Commission for such advice and directions, if any, as either may think proper to give, due regard being had to public convenience and to the rulings of the local tribunals."

The above agreement, in the absence of any power in the state, is, unless the clause in the last paragraph, "due regard being had to public convenience and to the rulings of the local tribunals," relates back to the first paragraph, binding, on the Nebraska Telephone Company, at least to the extent of any voluntary action on their part.

The purpose, as we construe it, of the anti-trust laws of the nation and states is for the purpose of protecting the people from extortions and burdens incident to an oppressive monopoly.

Certainly, where each jurisdiction is clothed with full and complete power of regulation, ample protection is afforded if the regulatory powers are fairly and properly administered. To hold otherwise would admit the inherent weakness of the regulatory powers of the state and nation, and the very laws designed to protect the people from inconvenience and unnecessary burdens would be the means of their continuance.

We have no quarrel with the Federal authorities in the performance of their duties and the exercise of their powers. Should they in their judgment deem the purchase of the Kearney Telephone Company's property prejudicial to the general public welfare, and in the administration of their powers thereby effect the retention and continuance of the duplicated telephone burden in Kearney and its surrounding territory, the responsibility must be theirs.

We concede that where the welfare of the nation as a whole

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requires the rigid administration of general Federal laws, even though it work an unnecessary hardship on the few, such laws should unhesitatingly be rigidly enforced.

We cannot, however, with all due deference to the Federal Department of Justice, concede that the case at hand comes within that class of legislation, and that complainants are entitled to the relief prayed for.

This Commission has consistently and continually encouraged the elimination of duplicated telephone service, and the fact that during the past four years the Nebraska Telephone Company has exchanged and sold approximately 20,000 subscriber stations to competitors, as against approximately 6,000 acquired, is entitled to considerable weight in the present case.

We therefore find that the Kearney Telephone Company and the Nebraska Telephone Company should be required to consolidate their respective exchanges in the city of Kearney; that failing any other method of consummating same, the Nebraska Telephone Company should be required to purchase the property of the Kearney Telephone Company, the terms of said purchase and sale to be approved by this Commission.

It is therefore *ordered* that the Nebraska Telephone Company and the Kearney Telephone Company be and the same are hereby notified and directed to consolidate their respective exchanges in the city of Kearney.

It is further *ordered* that the Nebraska Telephone Company, in the event no other method of consolidation is practical, be authorized and directed to acquire the property of the Kearney Telephone Company.

It is further *ordered* that the plan or method of consolidation agreed upon by the said parties, and, in the event of purchase, the terms of the sale, be submitted to this Commission within forty days from date hereof for its approval.

Made and entered at Lincoln, Nebraska, this 11th day of August, A. D. 1915.

Nebraska State Railway Commission, Henry T. Clarke, Jr., Chairman.

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NEBRASKA STATE RAILWAY COMMISSION.

IN RE CROWNOVER TELEPHONE COMPANY.

[Application No. 2153.]

Valuation — Sale price as measure of value.

1. The purchase price of a telephone property should not be accepted as the sole measure of its value, for rate-making purposes.

Valuation — Rate-making purposes — Present value.

2. In valuing the property of a telephone company for rate-making purposes, the Nebraska Commission adopted the present value of the physical property as found by its engineer, where the property had been acquired by a favorable purchase and there was an absence of records showing the value of the original property.

Depreciation — Maintenance — Basis for estimating.

3. The actual amount of property in use, and not the reduced amount paid for it upon the sale of a telephone property, should be the basis for ascertaining the necessary allowance for maintenance and depreciation, and in the absence of other evidence the cost of reproduction may be taken as this basis.

Depreciation — Maintenance — Telephone property — Percentage allowance.

4. An allowance of 9 per cent of the reproduction value of a telephone company was allowed for the purpose of maintenance and depreciation, where the topography of the country and the scarcity of population made the construction of long farm lines necessary.

Return — Reasonableness — Percentage allowance — Telephones.

5. An allowance of 7 per cent dividends on a telephone investment was held reasonable.

Accounting — Telephone companies — Toll and exchange service.

6. In the accounting of a telephone company, toll and exchange service should be kept separate, so that it may be possible to determine what the rates for each class should be, and where a company has failed to do this it should make the necessary changes in its accounts so that they may show the value of the toll property and the cost of that part of the business.

Service — Telephones — Farm lines.

7. A telephone company switching farm lines cannot be held responsible for poor service due to the unusual length of the lines, and the number of subscribers thereon, and to the lack of uniformity in the type of telephone instruments in use on such lines.

Service — Telephones — Farm lines owned by company.

8. A telephone company which is unable to reduce the length of its farm lines should make an effort to reduce the number of subscribers thereon, where a complaint as to the quality of the service rendered is largely due to the length of the lines and the number of subscribers thereon.

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Service — Telephones — Toll and exchange business.

9. The toll business of a telephone company should not be allowed to become a burden to the exchange, and if it is found that it is, sufficient operators should be employed so that all traffic can be handled promptly and efficiently.

[August 12, 1915.]

APPLICATION for authority to increase rates of applicant for its exchange at Sargent; denied.

Appearances: A. S. Moon for applicant; J. R. Dean for remonstrators.

Taylor, Commissioner: Applicant operates a telephone system, the headquarters and principal place of business being at Sargent. It operates 318 subscribers' stations of its own and in addition switches approximately 160 farm subscribers who own their own lines. The entire plant is grounded, with the exception of certain toll lines, which are metallic.

The rates in effect at the present time are as follows:

Business	$1.75	per	month
Individual residence	1.50	"	"
Party residence	1.25	"	"
Farm line	1.25	"	"
Switching farm lines	.25	"	"

A discount of 25 cents per month is allowed if rental is paid within thirty days after it is due. This does not apply to the switching rate.

It is desired by applicant to increase these rates as follows:

Business	$2.25	per	month
Individual residence	1.75	"	"
Party residence	1.50	"	"
Farm line	1.50	"	"

The discount of 25 cents to apply as at present.

In support of its application, the company submits a statement covering its operation from 1907 to the present. This has been analyzed by our accounting department, and is supplemented by a study made of the annual reports filed with the Commission since 1908. The engineer of the Commission made a physical valuation of the property, which is a part of the record. The following is a summary of the earnings and expenses of the company from 1908 to 1914:

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Earnings.

Year.	Rents.	Switching.	Toll.	Pole Rent.	Total.
1908	$1,898.21	$402.80	$640.34	$8.35	$2,949.70
1909	3,716.10	535.00	747.00	10.65	5,008.75
1910	3,863.00	544.95	852.15	9.65	5,269.75
1911	4,230.00	504.25	1,062.45	12.50	5,809.20
1912	4,270.25	527.30	1,540.02	12.05	6,349.62
1913	4,261.15	514.70	2,075.45	20.40	6,871.70
1914	4,288.55	481.04	2,269.78	37.70	7,077.07
Total	$26,527.26	$3,510.04	$9,187.19	$111.30	$39,335.79

Expenses.

Maintenance.	Operating.	General.	Toll Clearance.	New Construction.	Dividends.	Total.
$616.73	$538.50	$905.45	$9.83	$323.34	$388.00	$2,781.85
1,308.39	670.23	1,117.95	64.23	1,248.27	650.33	4,959.40
1,050.07	855.48	1,097.53	92.81	1,864.74	560.00	5,520.63
1,103.84	1,082.71	1,454.33	39.98	1,312.81	460.00	5,453.67
1,091.57	1,017.22	1,293.05	317.29	201.70	2,048.00	5,968.83
1,103.59	946.20	1,240.14	697.86	72.61	2,048.00	6,110.40
1,244.98	1,204.85	1,874.13	679.87	1,402.73	2,048.00	8,454.56
$7,419.17	$6,315.19	$8,982.58	$1,901.87	$6,426.20	$8,202.33	$39,249.34

[1, 2] While, on the face of the figures thus presented the showing is quite favorable to the company, it is necessary to subject them to some analysis before their conclusions can be accepted. For instance, dividends have been declared and paid on capital stock, a portion of which does not represent an actual cash investment. Applicant purchased this plant from the Central Telephone Company in 1907, paying therefor $10,700. According to the testimony of President Crint the property was secured at a very low figure, his estimate being that it was worth about twice the amount paid for it. At the time the property was purchased, stock was issued to the amount of the purchase price. Shortly thereafter the capital was increased to $11,500, the additional issue being made to cover the purchase of a small farm company and for small extensions made to the plant. In 1909 the stockholders concluded that they should have some evidence of ownership for the property secured, in excess of the original purchase price, and for some improvements that had been made. Accordingly they authorized an issue of $11,500, thus doubling the capital stock. This stock was distributed in the form of a dividend. In the absence of the records showing the

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value of the original property, it is impossible for the Commission to determine just what value should be placed on this stock, but it is clear that the purchase price should not be accepted as the sole measure of its value. While the price for which property is sold is an element to be considered in ascertaining its value for rate-making purposes, it is too unreliable to be accepted as conclusive. The price may be too high as well as too low. Lacking the necessary information, therefore, the Commission is compelled to look for some other basis that will be fair and equitable. In this instance it seems fair to adopt the present value of the physical property as found by the department's engineer, which is $20,531.12.

[3] The manner in which the present company came into possession of the original property makes it necessary to reject the book figures for the property investment as a basis for ascertaining the necessary allowance for maintenance and depreciation. The property investment account was started with the purchase price of $10,700. Whatever property there was in excess of that amount, therefore, should be taken into consideration in arriving at the amount required for maintenance, for it has to be repaired and replaced along with the remainder of the plant of which it is a part. In the absence of information as to the amount of it, however, we are again forced to adopt a method that will take it into consideration. This we have in the physical valuation as returned by the engineer. The reproduction value should represent the cost of all the property in using, and his we find to be $25,832.98.

[4] Owing to the unusual length of the farm lines in this plant, the allowance for maintenance and depreciation should be somewhat above the normal. The topography of the country and the scarcity of population make necessary the construction of long farm lines. The record shows that one of the farm lines on this system is 28 miles in length, which is much longer than economical maintenance and good operation warrant. The average for all the farm lines is above 12 miles. The average in the eastern part of the state where conditions are more favorable is from 6 to 10 miles. It needs no argument to demonstrate that such a condition calls for a larger expenditure for maintenance.
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The Commission has found from 8 per cent to 9 per cent on the reproduction value of the property to be a reasonable allowance for the purposes of maintenance and depreciation, and, in view of the abnormal condition existing here, finds that 9 per cent on the reproduction value is necessary and reasonable in this case.

[5] Using the figures of 1914, because they are representative of present conditions, and readjusting them to the basis outlined in the foregoing, we find that the results are still favorable to the company.

Earnings.		
Rentals	$4,288.55	
Switching	481.04	
Toll	2,269.78	
Pole rental	37.70	
Total		$7,077.07
Expenses.		
Operating	$1,204.85	
General	1,069.60	
Maintenance and depreciation (9% on $25,832.98)	2,324.96	
Total		4,599.41
Operating income		2,477.66
Deductions:		
Toll clearance	679.85	
Taxes	256.26	
Total		936.11
		1,541.55
Dividends (7% on $20,531.12)		1,437.17
Net surplus		$ 104.38

The allowance for dividends in the calculation is somewhat less than the company has been in the practice of paying, but the Commission has found 7 per cent to be a reasonable rate under ordinary conditions, and there appear to be no special reasons in this case why the allowance should be increased.

[6] Two features of the company's operations tend to cast doubt on the fairness of the above showing, *viz.*, the amount of the toll revenue and the standard of service now being rendered. The toll business handled by this company is much larger than is usually handled by a company operating a similar number of subscribers' stations. The toll revenue is over 30 per cent of the total gross revenue, whereas in the average company it will not

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exceed 10 per cent. The unusually large revenue from this source is explained by the fact that Sargent is the terminus of a branch of the Burlington railroad, and is thus the center of a very large trade territory. Long farm lines, many of them owned by the farmers, radiate to the north and west, and by means of "knife" switches connect with other lines of a similar character, so that the applicant company affords the only outlet for a wide territory. The company owns 88 miles of toll line, 58 miles of wihch is metallic. Before the status of either the exchange or the toll system could be determined, therefore, it would be necessary to have a separation of the properties and a segregation of the earnings and expenses. It is very probable that the large toll revenue accruing to the company is responsible for its good financial showing, and that if the exchange was set apart it would show a deficit instead of a surplus. Without such a separation, however, it is impossible to determine just what the exchange rates should be. The Commission is of the opinion that the two classes of service should be kept separate, so far as the accounting is concerned, so that it would be possible to determine what the rates for each class should be. Until that is done in this case, at least, the Commission cannot establish a scale of rates for exchange service that will be equitable. Applicant should at once make the necessary changes in its accounts that they may show the value of the toll property and the cost of that part of the business.

[7] A large amount of testimony was introduced with respect to the service being rendered by applicant, most of it being in the nature of complaints. The principal trouble appears to be that subscribers cannot get the central office promptly, and in some instances cannot attract "central" at all, it being necessary to have a subscriber closer to the office ring in and thus open the line. Practically all of the complaints came from farmers, the few business men who testifled complaining only of their inability to get out on the farm lines because they are always "busy." This condition with respect to the farm lines is to be expected on account of their abnormal length and to the large number of subscribers to the line. It is likely, also, that the large amount of toll business handled, much of it under very adverse conditions

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from an operating standpoint, occupies the time of the operators to such an extent that they cannot give as much time to local calls as they should. This situation is indicated by the testimony of Manager Crownover, who, in answer to a question, said:

"The drop may work in perfect order, and we may be repeating a long-distance call, and we see the drop come down, but we can't answer right away, and by the time we get ready so that we can answer, they are gone."

A large number who criticized the service were farmers located on switched lines. They assumed that all of the troubles originated at the switch board and that applicant is responsible for them. It is apparent, however, that where farm lines 20 miles in length and having as high as sixteen subscribers encounter difficulty in getting good service, the trouble lies not alone in the central office, but in the condition of the lines themselves. There is no uniformity in the type of telephone instruments used on these lines, the selection being left to the subscriber, and as a consequence the lines are unbalanced, and proper service is impossible. It is altogether probable that if these lines were reconstructed so as to reduce the number of subscribers to each circuit, suitable instruments of the same type installed, and more attention given to the maintenance of the property, a large portion of the troubles now complained of would disappear. These are matters, however, for the farm companies themselves to attend to, and applicant cannot be held responsible if such improvements are not made.

[8, 9] Under present conditions it would seem impossible for the company to reduce the length of its own farm lines, but the Commission believes it should make an effort to reduce the number of subscribers to the line. It should also make a careful study of its traffic to determine whether it has sufficient operators to handle both the toll and exchange business. The toll business should not be allowed to become a burden to the exchange, and if it is found that it is, sufficient operators should be employed so that all traffic can be handled promptly and efficiently.

The Commission realizes that if the recommendations made herein are followed the company will be put to considerable ex-

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pense. It is probable, also, that if the books are readjusted so as to separate the toll and exchange operations, the showing may call for a readjustment of the rates. Be that as it may, the changes suggested should be made. After a trial under the new conditions, another inquiry can be had and the rates readjusted, if that is found to be necessary. It is clear from the showing made at this time, however, that the application should be denied.

It is therefore *ordered* that the application herein be, and the same hereby is, denied.

Made and entered at Lincoln, Nebraska, this 12th day of August, 1915.

Nebraska State Railway Commission, Henry T. Clarke, Jr., Chairman.

NEBRASKA STATE RAILWAY COMMISSION.

IN RE VALPARAISO TELEPHONE COMPANY.

[Application No. 2207.]

Valuation — Telephone plant — Unpaid dividends used for plant construction — Statement.

1. In arriving at the amount of money actually invested in the property of a telephone plant by the stockholders, it is proper to compute dividends that should have been paid, where it appears that no dividends have actually been paid and that the money which would have otherwise been devoted to that purpose has been used for the development and extension of the plant.

Return — Reasonableness — Revenue by an increased telephone rate.

2. Rates proposed by a telephone company are reasonable where it appears that the expenses including an 8 per cent allowance for maintenance and depreciation on the reproduction value of the property new, and an allowance of 7 per cent on the total capital liability, would be more than the present earnings from such rates, and where the further development of the plant would increase the revenue to approximately 7 per cent on the investment.

Service — Telephones — Advance payment — Subscribers.

3. A rule requiring new telephone farm land subscribers, upon the installation of telephones, to pay a year's rental in advance, and for new individual business and residence line subscribers to pay three months' rental in advance, is reasonable.

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Depreciation — Telephone plant — Annual allowance for depreciation and maintenance.

4. Upon granting permission to a telephone company to increase its rates, a company was required to set aside out of its earnings annually an amount equal to 8 per cent upon the reproduction value of its property new, such a sum to be expended for current maintenance and to take care of the depreciation of the plant.

[August 23, 1915.]

APPLICATION for authority to increase telephone rates. The cost of reproduction new of the company's plant was found to be $37,003.05, the present depreciated value to be $30,073.06, and the total capital liability to be $32,899.95. It appearing that the proposed rates would not produce an unreasonable return, a new schedule was authorized, and the company was directed to maintain a new set of books so as to keep its account separate and distinct from the Valparaiso Electric Company.

Appearances: E. J. Clements, for applicant.

Taylor, Commissioner: Applicant is completing the reconstruction of its telephone plant at Valparaiso, installing a metallic system to take the place of the grounded system heretofore operated, and desires to establish a new and increased schedule of rates. The rates asked for are as follows:

Individual business, in advance	$2.50	per	month
Individual residence, in advance	1.50	"	"
Farm line, if paid on or before the 10th of the month	1.25	"	"
If paid after the 10th of the month	1.50	"	"
Extension sets	.75	"	"
Extension bells	3.00	"	year
Extra service (Two parties using same telephone), business	1.00	"	month
Farm line installation, per year in advance	15.00		
Individual business installation, per three months in advance	7.50		
Individual residence installation, per three months in advance	4.50		
Charge for advertising on farm lines	1.00		
Business telephones on party lines	1.75	per	month

The net rate for farm line service, as originally asked for, was $1.50 per month, but following a series of negotiations with the farmers involved, the rate was reduced to $1.25 per month and the application amended accordingly. The figures offered in this case by applicant as tending to show the effect of the proposed rates were set up on the basis of the higher charge for farm line service. The present farm line rate for grounded service is $1 per month.

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The record in this case makes clear that the plant under consideration is one of the best of its type in the state. In addition to being thoroughly metallic throughout, it is built to a high standard. The best of material has been used so that interference from weather and other physical conditions will be reduced to the minimum. The number on the farm line circuits has been reduced until the average is but slightly over eight to the line, and an improved type of telephone instrument has been installed for the use of farm subscribers. By means of a push button the central operator can be signalled by the farm patron without attracting the attention of other subscribers on the line. The instrument also possesses other advantages that make it desirable for farm service. Within the town there are nothing but individual lines, each subscriber having his own wire. In fact, the management has sought to construct a telephone plant that will give as good service as can be furnished under the present development of the art. In consequence of the standard of construction maintained, the investment in the plant is larger than the average plant of similar size. The Commission's engineer found the reproduction new value of the property to be $37,003.05, and the present, or depreciated value, $30.073.06. On a basis of 363 subscribers' stations in service, this gives a value of slightly over $100 per station, reproduction new, and $83, present value. These figures are high, but are supported by the books of the company, showing the original cost.

The outstanding capital stock at the present time is $27,000, and there is an indebtedness of $7,000. The company was started in 1904 with an original capital of $13,000. In 1906 the present president of the company, C. H. Wood, purchased a half interest in the business for $6,500. In 1908, because the property investment, as shown by the books, was in excess of $20,000, the owners concluded to increase the capital stock to $15,400. The added $2,400 of stock the partners divided equally, it being treated as a stock dividend, and no money being paid for it. In 1909 the stock was again increased, this time to $25,000, and no new money was paid into the treasury of the company for it. The new stock was also divided as a stock dividend between the owners. At that time the books showed a property investment of $27,000. In 1914 another issue of $5,000 was authorized, but

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of this only $2,000 has been sold, the remainder being in the treasury. The amount issued was paid for in cash at par.

[1] No dividends have ever been declared or paid by the company. In arriving at the amount of money actually invested in the property by the stockholders, therefore, it is proper to compute the dividends that should have been paid and that were left for the extension and development of the plant. It is fair to assume that the original $13,000 of stock represented an actual cash investment. Mr. Wood testified that he paid $6,500 in cash for his half interest, and that at that time the property inventoried at upwards of $20,000. As the plant had been in operation but two years at that time, but a small portion of earnings could have been put back into the property. Starting with 1908, the company has borrowed considerable money. The interest on this borrowed capital, however, has been paid out of the earnings. For the reason that there is no record of the results of operation of the company prior to 1906, we will start with the capital outstanding at that time to ascertain the amount of the investment represented by the unpaid dividends, accepting $13,000 as a reasonable allowance for the actual amount of money sacrificed by the owners. Allowing 7 per cent as a reasonable rate of return, and increasing the investment each year by the amount of the dividends for the previous year, we have $10,890.93 as the sum of money belonging to the stockholders upon which they are now entitled to a return. Adding to the original $13,000 this amount and the $2,000 of stock recently issued and paid for, we have $25,899.95, which represents the actual money put into the property by the stockholders. To this should also be added the $7,000 of indebtedness now outstanding, making a total capital liability of $32,899.95.

It is more or less difficult to arrive at an accurate statement of the operating expenses of the company. Applicant submits an estimate for the purpose of this case, but operating expenses and maintenance are so intermingled that the figures are misleading. Tested by the reports filed by the company with the Commission, they do not reflect the actual expenditures. For example, an estimate of $120 is made to cover miscellaneous expenses, such as stationery and advertising, light, heat, and power, rent of buildings, legal expense, insurance, etc., whereas, the annual report

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of 1914 shows an expenditure for these items of $755. An estimate of $120 per year is also made for taxes. The report of the actual payment for this purpose in 1914 shows $133.73 and in 1915, $211. The figures are rendered the more confusing, moreover, because applicant has a contract with an electric light company at Valparaiso under which it makes collections and reads meters, maintains the electric light lines, furnishes "pin" space on its own poles for the same, and performs other services. This work is all performed by the officers and employees of the telephone company. While the actual receipts and expenditures connected with the management and maintenance of the electric light property are kept separate on the books of the telephone company, the accounts are not so separated as to show the time put in by the persons employed. It appears, however, that the net remaining to applicant from this source is about $800 per year. It is quite clear that this is sufficient to pay for all the expense the company is put to in connection with its contract, and that if the amount is added to its gross revenue the result will be equitable to all concerned.

[2] From the statement submitted by applicant, supplemented by the testimony and the figures found in the annual reports, we are able to make a reasonably accurate estimate of the expense, one that, tested by comparison with other companies, seems fair under the circumstances. Using the figures thus arrived at, and applying the conclusions as outlined with reference to capital investment, we have the following showing of the company's financial condition under the proposed rates, assuming that there will be no change in the number of subscribers:

Earnings.		
27 Individual business at $30.00	$810.00	
78 Individual residence at $18.00	1,404.00	
253 Farm at $15.00	3,870.00	
Total rentals		$6,084.00
Toll (12½% of gross receipts)	247.20	247.20
Net income from contract with Electric Light Company	800.00	800.00
Total gross receipts		$7,131.20
Expenses.		
Officers' salaries	$1,380.00	
Operators' salaries	900.00	
Stationery and advertising	84.29	
Light, heat and power	72.15	
Rent of buildings	114.00	

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Legal expense	25.00	
Traveling expense	25.00	
Insurance	25.00	
Total expense		$2,625.44
Maintenance and depreciation 8 per cent on $37,003	2,960.24	2,960.24
		$5,585.68
Net operating income		1,645.52
Deductions:		
Taxes	200.00	200.00
		$1,345.52
Dividends (7% on $32,899.95)		2,302.99
Deficit		$957.47

While these figures show a deficit under the proposed rates, it is very probable that the further development of the field, and the addition of more patrons, will increase the revenues to the point where the net earnings will approximate 7 per cent on the investment. There will be slight earnings, also, from the incidental services provided for in the schedule. It is clear, however, that the rates as proposed are reasonable, and that the revenue they will produce is necessary to the proper operation of the plant and the payment of a return to the stockholders.

[3] Applicant asks permission to establish a rule providing for the collection in advance of rental where a telephone is installed for a new subscriber. For a farm line installation it is desired to collect a year's advance rental, and for individual business and residence, three months' advance rental. As the company is put to a considerable expense in the installation of new telephones, which expenditure is practically useless if the service is discontinued within a short time, it is regarded as a reasonable regulation to require payment in advance for new service. As the cost of installation is greater for farm telephones, it is proper to require a larger payment in advance than for city installations. The rule as applied for will be approved.

After setting forth the schedule of rates, the order continued:

[4] "It is further *ordered* that the said Valparaiso Telephone Company be, and the same hereby is, notified and required to set aside out of its earnings, annually, an amount equal to 8 per cent upon the reproduction, new, value of its property, the same to be expended for the current maintenance and to care for the depreciation of the plant.

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"It is further *ordered* that the said applicant establish and maintain a new set of books for the Valparaiso Telephone Company, separate and distinct from the accounts of the Valparaiso Electric Company, to the end that the earnings and expenses of the telephone company may be accurately shown, said new accounting system to be submitted to this Commission for approval on or before October 1, 1915."

WISCONSIN RAILROAD COMMISSION.

JOHN BOSSHARD et al.

v.

HUSSA BROTHERS LIGHT & WATER COMPANY.

Rates — Reasonableness — Reported cost of production.

1. The reported cost for generating electricity is acceptable for the purpose of determining the reasonableness of the rates charged therefor, where it appears to be less than the average cost of similar plants.

Rates — Electricity — Meter charges — Minimum bill.

2. A meter rental charge of 25 cents a month in addition to the regular charge for electricity furnished was ordered discontinued and a minimum bill to cover the consumer cost was substituted therefor by the Commission upon the ground that public utilities are required to furnish such equipment; the interest on this investment being covered by the general return on the investment allowed, a minimum bill being allowable to protect the utility from an inadequate remuneration from the small consumer.

Discrimination — Free service to stockholders and employees.

3. The practice of furnishing electricity free of charge to stockholders and employees of the company was ordered to be discontinued as being illegal under § 1797m-89 of the Wisconsin Public Utility law.

Rates — Electricity — Street lights.

4. A rate of $27 a year for each electric street lamp was reduced to $22 where it appeared that the prevailing rate for the same quantity of service in other places was lower.

Rates — Water supply — Consideration of fact that municipality owned the mains.

5. Objection that a water company received all the revenue from the sale of water although the village owned the mains and a part of the pumps was dismissed as being without merit, where it appeared that the water company was entitled to the use of the mains by virtue of a contract providing water for fire protection in consideration

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of an annual amount and the use of the water mains of the village for commercial purposes, and that the annual cost to the village for fire protection, taking into consideration the amount paid plus the annual fixed charges upon its investment in the distributing system, was reasonable, and that the rate charged for commercial service was likewise reasonable.

Pleading — Complaint — Answer — Rates.

6. The Commission will confine its investigation to the matter contained in the complaint alleging excessive rates, where the answer, averring that the rates were inadequate and requesting the Commission to ascertain and fix adequate rates, was not in the form required by law to amount to an application to increase rates, and especially where few details in the matter of physical and operating data were given.

[August 16, 1915.]

COMPLAINT alleging (1) excessive rates for electricity for street lighting, (2) that a meter rental charge of 25 cents a month was made in addition to the regular charge for electricity furnished, (3) that the utility received all the revenue from the sale of water although the village owned the mains and a part of the pumping equipment; sustained on the first two allegations and dismissed as to the third; respondent granted the privilege of establishing a minimum charge, prepared by the Commission, to cover the consumer cost, and ordered to discontinue the practice of furnishing free electricity to the stockholders and employees of the company.

The appearances are set out in the opinion.

By the Commission: The complaint in the above-entitled matter was filed February 3, 1915. The three charges therein contained are (1) that the rates for street lighting are excessive, (2) that a meter rental charge of 25 cents per month is charged over and above the energy charge of 12 cents per kw. hr., and (3) that the utility receives all the revenue from the sale of water, although it is pumped by equipment of which the village owns a part or share, and runs through mains belonging entirely to the village.

Due notice of investigation and hearing was served on interested parties, the matter coming to hearing on May 7th at Bangor. John Bosshard appeared in his own behalf as petitioner, and A. C. Wolfe, of W. F. and A. C. Wolfe, attorneys at law, appeared for the respondent.

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An answer to the complaint was filed by respondent's counsel at this time. The answer denied that excessive rates for street lighting and commercial service are charged, or that the meter rental charge is improper, and further alleged in counterclaim that the rates and charges made against the village and its inhabitants for lighting and water are entirely inadequate. It is asked that the Commission ascertain and fix proper and adequate rates, suggesting that certain minimum charges for light, power, and combined service be installed.

The testimony taken at the hearing need not be reviewed in detail, but the main points may be recited. It was shown that the Hussa Brewing Company was equipped with a private lighting and water system, and that it later undertook, through the Hussa Brothers Light & Water Company, to provide electric and water service to the inhabitants of the village of Bangor. The village installed the water mains at that time in order to secure fire protection. Respondent introduced into the evidence copies of the franchise granted to operate an electric utility, the contract to furnish fire protection, and the proposal and contract for street lighting.

The matter of separating the expenses of the water and light utility from the Brewery Company was gone into to some extent, and the sources of revenues derived from the supply of water and light were explained. The expense and investment for a period of years were shown by an exhibit introduced by the respondent.

No valuation is available to show the present investment in the water and electric utilities. The annual report of the electric utility is fairly complete, but the report of the water utility is of little value, due to the joint operation of this utility with the brewery. For these reasons it appears that no detailed study of the rates can be made with particular reference to the actual costs, but that the questions raised by the complaint must be decided on a more general basis.

Electric Utility.

[1] This utility supplies service continuously between 5:30 A. M. and midnight except for the noon hour. The boiler plant is used jointly with the brewery. The company has adopted a policy of charging the electric utility only for the operation at

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night, the cost of day operation being offset by the electricity used in the brewery at night, for which no other charge is made. Whether or not this policy is equitable, the result is a normal cost to the utility. This can be shown by the following table, which shows the operating expenses, exclusive of fixed charges, of twenty small steam-generating electric utilities upon a kilowatt hour generated basis.

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Operating Expense per kw. hr. Generated—Small Electric Utilities
Steam Generation
Year Ending June 30, 1914.

Location.	Population.	Generation.	Generation.	Distribution.	Consumption.	Commercial.	General.	Undistributed.	Total.
			¢	¢	¢	¢	¢	¢	¢
Algoma	2,300	97,580	3.36	.25	.10		1.20	.03	4.94
Alma	1,100	29,382#	8.24	.35	.15	.07	.28	.45	9.54
Arcadia	1,400	87,550	4.86	.39	.29		.40	.09	6.03
Athens	1,200	103,920	4.17	.13	.29	.03	.28	.04	4.94
Cedarburg	2,000	198,231	4.41	.60	.07	.12	.22		5.42
Chilton	1,800	175,400	5.86	.64	.30		.74		7.54
Gillett	800	24,400	3.01	3.53	.12		.08		6.74
Mondovi	1,325	30,000# (2)	7.41	.11	.70	.51	1.27	.70	10.70
Omro	1,100	38,100	5.98	.94	.79	.85	2.78	.30	11.64
Neillsville	2,000	75,000	5.61	1.02	.68		.40		7.71
Owen	800	141,720	1.43 (3)	1.16	.20	.08	.35	.04	3.26
Pardeeville	1,050	43,200 (1)	5.03	.83	2.95	.14	.60	.07	9.62
Phillips	2,500	250,000#	3.54	.20	.11	.08	1.77	.10	5.80
Rib Lake	1,100	37,880	7.27	.57	1.36				9.20
Rio	700	22,000#	9.18	.18	.45		2.73		12.54
Sauk City	900	34,500	6.81	.25	.27				7.33
Seymour	1,100	45,400	8.78	.86	.23		.27		10.14
Sheboygan Falls	1,630	65,000	4.29	1.25	4.11	.03	1.85		11.53
Viroqua	2,200	148,600	3.45	.67	.13		.11	.23	4.59
Bangor	750	55,500	5.84	.16	.04	.58	.01		6.63
Weighted average			4.68	.62	.48	.09	.76	.08	6.71
Arithmetic average			5.42	.70	.66	.13	.77	.10	7.78
Median			5.32	.58	.28	.10	.40	.10	7.44

Estimated.
(1) Mostly purchased at 3 cents.
(2) Both steam and hydraulic generation.
(3) Burns mill refuse for fuel.

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An inspection of this table shows the cost at Bangor per kw. hr. generated to be 6.63 cents, while the weighted average for the group is 6.71 cents and the median 7.44 cents. The reported expense at Bangor has therefore been considered acceptable for the purpose of this case. Fixed charges have been computed on the estimated apportionment value of the plant. For this value, the investment in generating and steam equipment has been assumed to be one half of that reported by respondent's exhibit of investment, basing this assumption upon testimony to the effect that the utility used this equipment one half of the time. To this amount the investment in distribution system has been added. The result checks well with a normal figure of $10,000 for plants of this size, and the latter figure is accordingly used. Fixed charges at 12½ per cent therefore amount to 2.25 cents per kw. hr. Nonoperating revenues of $218 are deducted, making the net expense estimate $4,710, or 8.48 cents per kw. hr.

The present operating revenues of this utility are $5,083, made up as follows:

Commercial lighting earnings	$3,058
Municipal contract lighting earnings	1,571
Commercial power earnings	18
Miscellaneous earnings (meter rental)	436
Total	$5,083

[2] It is believed that it would be advisable to discontinue the present meter rental of 25 cents per month, and substitute therefor a minimum bill to cover the consumer cost. Utilities are required to furnish such equipment and the interest on this investment is covered by the general return on the investment allowed. A minimum bill is allowable, however, to protect the company from an inadequate remuneration from the small consumers, and it is thought that in this case the charge should be 75 cents per month for lighting consumers, 75 cents per horse power per month for all power consumers, and $1 per month for mixed consumers, or those who use light, and who also have less than 1 horse-power of power load, supplied through the same meter. This readjustment of charges will eliminate one source of revenue, meter rentals, amounting to $436, but this should be offset

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to the extent of about $75 by reason of the revenue from minimum bills.

[3] The testimony shows that free service is rendered to fourteen employees and stockholders of the brewing company. This practice is illegal according to § 1797m–89 of the Public Utility law, and must be discontinued. The affairs of the two companies should be entirely separated. This free service, put upon the regular schedule, should net the company $245 additional, this amount being based upon the average yearly bills of other consumers.

[4] The total amount of $1,571 paid for street lighting by the village appears to be high. The cost *per capita* was $2.18 in 1912, while the average for 65 class C plants at that time was $1.01. These comparative relations do not appear to have changed at the present time. On the basis of $1,000 of assessed valuation, the cost to Bangor is $3.37, while for a group of 65 class C utilities, this cost averaged $1.55.

The facts above shown are mostly attributable to the rate of $27 per lamp per year. This is rather high for service upon a moonlight-midnight schedule considering that the lamps are no larger than 48 candle power. The prevailing rate for this quantity of service in other places is lower. Accordingly it is our opinion that the rate in Bangor ought not to exceed $22 per lamp per year. The revenue on this basis would equal $1,342.

The total operating revenues revised according to the above discussion would amount to $4,738, as follows:

Commercial lighting:		
Previous revenues	$3,058	
Revenue from discontinued free service	245	
Additional from minimum bills	75	$3,378
Commercial power		18
Municipal contract lighting		1,342
Total		$4,738

It will be noted that the revenues from power sales are extremely low. This may be partly due to the fact that power is sold on the lighting schedule, and may consequently have been charged in with these revenues. It is also due to the fact that the connected power load is very small. Some endeavor should be made to secure more of this business by filing a power rate which can be offered to prospective users of this class of service.

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The above discussion indicates that the position of the complainants in regard to street lighting rates and meter rentals is justifiable, but that the respondents should be granted the protection of a minimum bill. These matters will therefore be taken care of in the order of the Commission following.

Water Utility.

[5] That part of the complaint relating to the water utility alleges that the company receives all the revenue from the sale of water commercially, although the village owns the mains and a part of the pumps. There is nothing in the testimony to disclose the nature or value of the interest which the village may have had in the pump at any time. That the title to the water mains vests in the city is not disputed.

As heretofore observed, the material available for a study of the water rates is very limited and it will therefore be necessary to use general statistics.

The contract entered into by the village of Bangor with the Hussa Brewing Company under date of October 17, 1905, provides that in consideration of an annual amount and the use of the water mains of the village for commercial purposes, the latter party agrees to furnish fire protection of a specified quality to the village of Bangor. The present status of the company is therefore legal and subject only to consideration of reasonableness.

The monetary consideration specified in the contract amounts to $150 per annum for the first two years of the contract and $75 per annum for the remaining eight years of the life of the contract. The annual cost to the village, therefore, consists of the amounts above specified, plus the annual fixed charges upon its investment in the distribution system.

The report of the water utility shows that there are 3,670 feet of water main, of which all but 500 feet is 6-inch pipe. There are also 9 fire hydrants. The value of this distribution system can be estimated at between $3,100 and $3,600. Computing interest on the money at 5 per cent, depreciation at 2 per cent, maintenance at 2 per cent, and lost taxes at 1 per cent, or a total of 10 per cent, the annual cost to the village of this equipment is not more than $360. To this may be added the charge of $75

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for furnishing fire protection made by the water utility. The total cost of fire protection is therefore $435, which is not far from the normal cost for villages of the size of Bangor. Again, $50 may be said to represent an average figure for hydrant rental, and this would cost the village of Bangor, for 9 hydrants, $450.

These figures serve to show that the cost of fire protection to the village as specified in the contract is not unreasonable. Further than this, it appears that the village bears the expense of maintaining the distribution system, which lessens the expense to be borne by commercial service as a whole.

The rate charged for water by the respondent company is 15 cents per 1,000 gallons, with a minimum yearly charge of $5. An inspection of rates in force in other places discloses few with a lower rate for general commercial service. It would therefore appear that the residents of Bangor were receiving the benefit of the ownership of the distribution system by the village.

The complaint alleges that the company receives all the revenue from commercial service. While it is not specifically so stated, by implication it is inferred that, considering the ownership of mains by the village, the total revenues are too large, considering the expenses. It has already been shown that the rate for hydrant rental or fire protection is not excessive, and that the rate for commercial service is rather low. If, therefore, the total revenues are not proportionate with the expense, this situation must be due to some unusual operating condition. But, as before indicated, the annual report of the utility is not sufficiently complete to indicate such a condition, and statistics of other small water utilities must be resorted to. Because there are very few privately owned water utilities of this class, it will be necessary to use data obtained from municipal utilities.

The operating expense *per capita* of 26 small plants in 1913 was $1.11. This expense per consumer was $9.20. These figures indicate that the cost of operating such a plant in Bangor would be between $750 and $800. Inasmuch as the present revenues are but $566, it would appear that the present mode of operation in connection with the brewery is probably beneficial for the village in so far as expense is concerned.

The position of the complainants against permitting the utility

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to receive all the revenues from commercial service does not, therefore, appear to be justified.

CONCLUSION.

[6] The findings of this case are based upon the complaint as filed. The answer and counterclaim of the petitioners cannot receive the consideration of a formal application, for the reason that it did not, in manner and form expressed by law, amount to an application to increase rates. Moreover, it is doubtful if the Commission would attempt to rule on such an application without requiring from the utility greater detail in the matter of physical and operating data than has been available. For these reasons, the Commission has confined its investigation to the matter contained in the complaint.

It is therefore *ordered* that the respondent, the Hussa Brothers Light & Water Company, discontinue the present rate for street lighting, and substitute in lieu thereof a rate not to exceed $22 per lamp per year.

That the respondent discontinue and abolish the present meter rental charge of 25 cents per month.

That the respondent discontinue and abolish the practice of rendering free service to stockholders and employees of the brewing company contrary to the provisions of § 1797m–89 of the laws of 1907.

It is further *ordered* that the complaint, in so far as it relates to the receipt of all revenue arising from the furnishing of commercial water service through the mains of the city by the company, be, and the same hereby is, dismissed.

It is further *ordered* that the respondent company may file with the Railroad Commission the following minimum charges for electric service to commercial consumers.

Minimum Bills.

The minimum monthly bill for commercial lighting consumers shall be 75 cents. The minimum monthly bill for power consumers shall be 75 cents per horse power or fraction thereof connected, except that when the power installation is less than 1 horse power and service is supplied through one meter, the mini-

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mum monthly bill for combination lighting and power consumers shall be $1 per month.

Railroad Commission of Wisconsin, by Halford Erickson, Carl D. Jackson, Walter Alexander, Commissioners.

WISCONSIN RAILROAD COMMISSION.

IN RE GRANGE HALL FARMERS TELEPHONE COMPANY.

Rates — Telephones — Reasonableness — Comparison.

1. It is unfair to attempt any comparison between rates charged by a company furnishing telephone service upon a commercial basis and including presumably a reasonable allowance for interest on capital invested and for depreciation of the property, and the minimum annual cash disbursement at which farmers can secure grounded line telephone service with an excessive number of subscribers on the line, and with no allowance made for depreciation or interest or for the labor required to keep up the line.

Monopoly and competition — Farm line of commercial company — Cost of service.

2. A farmer's telephone company should not be allowed to parallel the lines of a company organized on a commercial basis on the theory that the latter company charges an annual rate of $12 per year, and that the farmer's company can furnish service for $3 per year, since the latter charge covers only the central office expense and makes no allowance for interest on the capital invested, for accumulating a reserve to replace the property at the end of its useful life, for the cost of material and supplies used in keeping up the line and instruments, for the renewal of batteries, or for taxes.

Monopoly and competition — Company furnishing adequate service — Offer of competing company to establish cheaper service at lower rates.

3. A telephone company already in the field, apparently capable of furnishing good service, and supposedly put there in response to a demand, either direct or indirect, for such a grade of service, is entitled to protection against the competition of a line built as an experiment to give a cheaper grade of service at lower rates, although the prospective patrons will be satisfied with the poorer service.

Monopoly and competition — Relative cost of service — Labor.

4. In determining the cost of service to be furnished by a telephone company proposing to enter a field already occupied, consideration must be given to the cost of labor for repairing lines and instruments and for administering the business; and it is immaterial that patrons of the competing lines can afford to donate a certain amount of labor for maintenance, since this is something which can-

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not be considered after a company has been induced to enter a territory and is there established.

Monopoly and competition — Discontinuance of telephone line — What does not constitute.

5. An order of the Commission requiring the discontinuance of telephone service on a competing line is not complied with by mere discontinuance of the service by the company acting as an entity distinct from the patrons of the line who continue to use it as a neighborhood convenience; but such service must be wholly discontinued both for the company and the patrons.

[August 18, 1915.]

PROCEEDINGS in the nature of a review of the former order of the Railroad Commission directing the Grange Hall Farmers Telephone Company and the individual patrons to abandon the use of a new extension of the line; patrons ordered to discontinue its use as a neighborhood line.

The appearances are set out in the opinion.

By the **Commission**: This decision is in effect a review of the previous decision of the Commission issued August 13, 1914, in Re Grange Hall Farmers Teleph. Co. 15 Wis. R. C. R. 11–17. In order that this case may be clearly understood, it is necessary to review briefly the facts that were brought out in the former investigation.

That case arose upon an application of the Grange Hall Farmers Telephone Company for authority to extend its lines in the town of Rock Elm, Pierce county, Wisconsin. The first notice of the proposed extension was served upon the Commission December 13, 1913. It was stated that the line interfered with no other company. It was clear that the Grange Hall Farmers Telephone Company understood the requirements of chapter 610 of the Laws of 1913, for in serving its notice upon the Commission it used the blank form provided by the Commission for that purpose, and included in the letter accompanying the notice a request for an interpretation of the antiduplication act as applied to a situation existing in another portion of its system. Relying upon the statement thus made, the Commission advised the Grange Hall Farmers Telephone Company at the expiration of twenty days that it was authorized to proceed with the extension.

In the spring of 1914 the Highland Telephone Company notified the Commission that the Grange Hall Farmers Telephone

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Company was proceeding to haul poles along the route of the Highland Telephone Company's line with the apparent intention of constructing a line parallel thereto, and that the Highland Telephone Company wished to object to such invasion of its territory. Upon inquiry the Commission found that the Highland Telephone Company was operating for local service in the town in which the extension was being made, that the Grange Hall Telephone Company had not filed written notice upon the Highland Telephone Company as provided by statute, and that the line under construction, far from "not interfering with any other company," in fact would parallel a line of the Highland Telephone Company.

The Grange Hall Company was thereupon informed that it must file the statutory notice with the Highland Telephone Company and with the Commission, and thus bring before the Commission for determination the question of whether or not public convenience and necessity required the construction of the extension. The notice was filed and a hearing was held on May 14, 1914. Instead of awaiting the outcome of the proceeding, the Grange Hall Farmers Telephone Company, or the individual subscribers to be served by the line in question, hastened with the work of constructing the line and succeeded in placing it in service prior to the hearing. The evidence showed clearly that the line was not warranted by public convenience and necessity. This being so, and the line having been constructed without compliance with the provisions of the statute, the Commission had no alternative than to enter a finding that had the statutory notices been served and the case properly brought before it prior to the construction of the line, it would have refused its authority for the construction. The Commission ordered that the Grange Hall Farmers Telephone Company and the individual patrons of the new line should, within a reasonable time, abandon its use, and stated if such service were not discontinued the matter would be certified to the attorney general for prosecution.

On November 10, 1914, the Highland Telephone Company filed a complaint with the Commission to the effect that the Grange Hall Farmers Telephone Company had disregarded the finding of the Commission and was continuing the use of the extension which they had constructed in violation of law, or that

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the farmers who were attached to the line so constructed were continuing its use. A notice of investigation was thereupon issued and a hearing was held at Woodville on December 18, 1914. Mr. Zimmer appeared for the persons who are using the line in question, and Mr. Joe Johnson appeared for the Highland Telephone Company.

The hearing disclosed that the Grange Hall Farmers Telephone Company had in fast refused service to the patrons of the line through its Rock Elm switch board to which the line had previously been connected. Use of the line by the farmers connected to it was not discontinued, however, so that the intent of the order of August 13, 1914, had not been entirely observed. It was stated that the order of the Commission had not been clearly understood by the persons using the line, and that they wished to urge new reasons for continuing its use. This proceeding was, therefore, in the nature of a review.

The facts relating to the unlawful construction of the line, and the requirements of the law with respect to the duties of the Commission in dealing therewith, have not been changed by lapse of time. In this regard, therefore, nothing can be altered in or added to the decision of the Commission of August 13, 1914. It only remains to define a little more clearly the effect of the decision entered at that time, and to meet the most serious contentions that were made at the second hearing in justification of the construction of the line.

The admitted reason for the construction of the line was the impression that telephone service can be given at a much lower rate than the Highland Telephone Company charges. The representative of the users of the line testified that he wanted telephone service, and that he desired service along the highway on which this line was built because he wished to communicate with his neighbors along that highway. He stated that he did not wish to take the service of the Highland Telephone Company, but "I made up my mind that it would be cheaper to run a line." Testimony was received as to the estimates that had been made by the projectors of this new line of the cost of construction and of furnishing service. It appeared that they expected to complete 5½ miles of line and to place it in condition to operate at a total cost of approximately $390. Switching service was to be afforded by

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the Grange Hall Farmers Telephone Company at a cost of $3 per subscriber. Fifty cents per phone per year was considered adequate for maintenance and repairs. This impression of the cost of construction and operation of telephone lines was so uniformly held by the witnesses that it calls for some discussion.

[1] The rate charged by the Highland Telephone Company for rural service is $12 per telephone per year. Comparison of this annual rate with the probable annual cost of service over the line now under consideration is made difficult by the fact that the Highland Company's service is furnished over a metallic line with a limited number of subscribers, while the service which the farmers are now receiving is furnished over a grounded line with an excessive number of subscribers. It is unfair to attempt any comparison between the rate charged by a company furnishing telephone service upon a commercial basis and including presumably a reasonable allowance for interest on capital invested and for depreciation of the property, and the minimum annual cash disbursement at which farmers can secure grounded line telephone service with an excessive number of subscribers on the line, and with no allowance made for depreciation or interest or for the labor required to keep up the line. In the present case the patrons of the line declare that they can furnish adequate service at a cost of construction as set forth above, and at an annual charge of $3 per subscriber. Just what character of service would be considered adequate by these subscribers is not fully determined. It may be said generally that what constitutes adequate service seems to depend very materially upon who is furnishing the service. Where it is being furnished on a commercial basis, patrons are seldom slow to point out the shortcomings of telephone service over cheaply constructed grounded lines with the number of subscribers on a line not properly limited. Where, however, the service is furnished on a co-operative basis, patrons will often accept a very much lower standard of service than they would be willing to accept from a commercial company. We assume in this case that by adequate service the witnesses mean not merely service which will remain acceptable while the experience of having a telephone in the house remains a novelty, but such service as is usually demanded by persons accustomed to having telephone service, and who are

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acquainted with the standards at which such service may be maintained.

[2] The $3 per subscriber at which the patrons of the line contend that they will receive service covers only the central office expense. Indeed, it is doubtful if this charge covers the actual cost of switching service in this instance. No allowance is made for interest on the capital invested, for accumulating a reserve to replace the property at the end of its useful life, for the cost of materials and supplies used in keeping up the lines and instruments, for the renewal of batteries, or for taxes. This recital of omissions from the estimates of expense is sufficient to show the unsoundness of the opinion held with relation to operating cost. The attitude which it seems the patrons of this line must have taken is that the only consideration of importance to them is the amount which they must actually disburse for a few years during the early life of the system before depreciation takes effect.

[3] It may be argued that the patrons to be served should be permitted to furnish themselves with as poor service as they care to put up with. But the Highland Telephone Company, it must be remembered, already had a line in this territory, apparently capable of furnishing good service, and supposedly put there in response to a demand, either direct or indirect, for such a grade of service. It is therefore entitled to protection against the competition of a line built as an experiment, to give service to a minority who have conceived the idea that a different character of construction and a different management will result in lower telephone costs.

If the patrons on the new line were to furnish the equipment necessary to give metallic service with a limited number of parties on a line, their investment per subscriber would scarcely be less than $40. Interest and depreciation on this conservative amount, which, it may be stated, must inevitably be borne in some form or other even if not recurring annually as a cash disbursement, would amount to $5.60 if figured at 14 per cent; or assuming that a rate of interest of 5 per cent on the investment and a rate of depreciation of 7 per cent would be adequate, the annual expense, as distinguished from the annual expenditure, would be $4.80 per phone. The cost of renewing batteries would be from 50

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cents to $1 per phone, and there would necessarily be some expense for materials for repairing the line. The cost of central office service, with proper provisions for interest on capital invested and for depreciation of property, and with the allowance for replacing batteries and purchasing materials for repairs, would, in all human probability, make up a total of from $9 to $10 per year. This estimate does not include an allowance for labor furnished by the patrons of the line. If proper allowance were made for this item, the full cost of the service could not reasonably be expected to be much, if any, less than the rate now charged by the Highland Telephone Company.

[4] Of course, the position taken by the patrons of the line is that they can afford to donate a certain amount of labor for maintaining the line, and which the Highland Telephone Company, being operated on a commercial basis, cannot afford to do. But it cannot be maintained that the inclusion in the rate of an amount sufficient to cover the cost of labor for repairing lines and instruments and for administering the business is an improper item to include in estimating the cost of telephone service. If there were no telephone service being furnished in the territory, the projectors of a new line might well consider as a matter of policy whether they could afford to pay a telephone company a rate sufficient to meet all the expenses incurred in furnishing telephone service, or whether it would be better to pay a telephone company for only such portion of the service as each individual would be incapable of furnishing for himself. After a company has been induced to enter into the territory to give service, it is too late to consider this preliminary problem.

On reason and on the experience of this Commission, therefore, it would seem that the belief of the builders of this line that telephone service could be given at a cost of but a few dollars a year is mistaken. Perhaps the candid admission of other individuals who have constructed a telephone line under similar conditions and with a like belief, that experience has proved them to have been misguided, will be convincing. We quote from a letter in the files of the Commission received from the officers of an association owning a rural telephone line, and requesting the assistance of the Commission in certain difficulties in which the company had fallen:

"We were somewhat ignorant about cost of building telephone

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lines when we started and were made to believe we could build for $10 each starting with 25 members (each member to buy his own phone besides), but before we finished the first outfit one man put in $100 in cash and labor, another put in $50 in cash and labor, two more put in $25 each, one more $20, and one more $15, all the rest paying $10 each. Since starting the first system, we have found out that we cannot build lines for $10 for each member, and in order not to have the charter members build the lines for new members, such new members are required to pay in $25 each to build such lines, or else build the stubs of lines themselves and pay $10 each for connecting up with central."

Many similar instances have come under the observation of the Commission. In fact it is almost a moral certainty that if the builders of the line in question continued giving service, their experience would prove the same as that of the writer of the letter from which the quotation is taken. We submit that the testimony of this gentleman is an apt illustration of the truth of the contentions we have made.

[5] The Grange Hall Farmer Telephone Company, acting as an entity distinct from the patrons of the line, has apparently discontinued service in accordance with the Commission's order of August 13, 1914. The patrons on the line however, have not discontinued its use as a neighborhood convenience. It does not appear necessary to issue a formal order in the case, but merely to state a little more definitely the intention of the order of August 13, 1914.

The use of the line in question must be discontinued, not only as between the patrons connected to it and the Rock Elm central office, but as a neighborhood line as well. One month should be sufficient time in which to permit the parties now receiving service over this line to make other arrangements for telephone service if they desire it. Unless all connections between this line and the telephone instruments on the premises of subscribers are discontinued within one month from the date of this decision, the matter will be certified to the attorney general for prosecution.

Railroad Commission of Wisconsin, by Halford Erickson, Carl D. Jackson, Walter Alexander.

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WISCONSIN RAILROAD COMMISSION.

ROY GATES et al.

v.

BRIDGEPORT TOLL BRIDGE COMPANY.

THE PEOPLE OF PATCH GROVE and Vicinity

v.

BRIDGEPORT BRIDGE COMPANY.

Valuation — Rate-making purposes — Effect of purchase price.

1. In determining the fair value of the property of a public service corporation for rate-making purposes, the Wisconsin Commission will not claim a lower value on the property than it otherwise would by reason of the fact that the owners paid very little for it.

Bridges — Toll — Traffic study.

2. In drawing any conclusions regarding the traffic on a toll bridge, the Commission must be guided to a large extent by the geographical location of the bridge with relation to its patrons.

Return — Operating expenses — Toll bridge — Damage to personal injuries.

3. In a toll-bridge rate inquiry, cognizance must be taken of the probability of damage to its patrons, and resultant claims therefor.

Return — Operating expenses — Damage to toll bridge — Extraordinary losses.

4. Losses due to the extraordinary conditions that surround the operation of a toll bridge, which can hardly be foreseen, must be given some consideration in determining the rate of return to be allowed.

Return — Income — Toll bridge — Rental value of house of toll master.

5. The rental value of a dwelling necessary for the accommodation of the gateman or toll master of a toll bridge, and occupied for the owner of the bridge, should be considered as part of the bridge income, the value of the house having been allowed as part of the value of the bridge property.

Depreciation — Annual allowance — Toll bridge.

6. An annual allowance of $1,050 for depreciation was made in the case of a toll-bridge property, the composite life of which was estimated at twenty-five years, and the present value of which was fixed at $23,831, and this allowance was held to be conservative when consideration was given to the fact that contingencies and losses due to extraordinary causes might occur at any time.

Return — Toll bridge — Inadequacy.

7. A return of 4.6 per cent on the present value on a toll bridge is inadequate where the interest rate on the best security is from 6 to

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7 per cent in the vicinity, and the hazard of the bridge investment is great.

Discrimination — Toll-bridge rate — Stock buyers — Rural mail routes.

8. In formulating a schedule of rates for a toll bridge which was receiving an inadequate return on its investment, it was held that public stock buyers, allowed to pass free of charge, should be assessed at the regular rates, and that rural mail routes should be assessed either at single-horse vehicle rates, or team rates, unless a yearly contract basis, open to all users, is agreed upon.

[August 18, 1915.]

COMPLAINT as to excessive rates for toll bridge, and as to inadequate service; complaint as to service dismissed; bridge operation found to produce inadequate revenue; company authorized to establish certain multiple ticket rates, in order to eliminate discrimination in favor of certain patrons; existing rates otherwise to remain in effect.

The appearances are set out in the opinion.

By the Commission: Complaint in the matter of Roy Gates et al. v. Bridgeport Toll Bridge Company was filed with the Commission May 28, 1914, the complainants being farmers resident in the town of Bloomington, Grant county, Wisconsin. The respondent, the Bridgeport Toll Bridge Company, owns and operates a toll bridge across the Wisconsin river at Bridgeport, Crawford county. The complainants allege:

1. That the toll is excessive, particularly the rate of 25 cents one way or 50 cents for round trip for a team of horses.

2. That delays are frequent, due to the gate being closed and the operator not on hand.

On July 1, 1914, H. Lathrop & Sons, owners and operators of the Bridgeport toll bridge, submitted a statement signed by thirty-eight merchants, farmers, stockbuyers, salesmen, etc., of Patch Grove, Millville, Bloomington, Bridgeport, Bagley, Prairie du Chien, and Plattsville, as follows:

"To whomsoever it may concern, and to the Railroad Commission of Wisconsin in particular:

"We the undersigned, who frequently cross the Wisconsin river bridge at Bridgeport, hereby certify that we have experienced no difficulty or delay on account of gates being closed and

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no one in charge of same, as has been, or may have been, alleged by certain parties whose names are unknown to us."

On September 11, 1914, a second complaint filed on behalf of the people of Patch Grove and vicinity was received at the Commission's office.

These complainants allege that the toll of 50 cents round trip per team is excessive, and that the approaches and the bridges are in poor and dangerous condition, and not sufficient to accommodate the traveling public safely.

It appears from an examination of the various complaints and statements that certain signers, inadvertently perhaps, signed both the latter complaint and the statement submitted by Mr. Lathrop.

The following toll rates, which are posted at the north end of the bridge, are, with two exceptions, the lawful rates of the company on file with the Commission:—

Automobile	50 cents
Motorcycles	25 cents
Single horse rig	25 cents
Horseback rider	25 cents
(Above classes return free within 24 hours.)	
Two-horse team, one way	25 cents
Led horse	10 cents
Bicycle	10 cents
Foot passenger	5 cents
Cattle per head	5 cents
Sheep per head	3 cents
Swine per head	3 cents
Special rates—cordwood—per cord (round trip)	35 cents
" " —100 tickets	$35.00
Rural delivery mail rig (round trip)	25 cents
Stock buyers (Public)	Free

Hearing was held at the office of the Railroad Commission in the capital at Madison, on September 11, 1914. Mr. H. Lathrop appeared for the respondent. There were no appearances for petitioners.

From the testimony introduced at the hearing and from data submitted by the utility in connection with this case, as well as from the report of the Commission's engineer, a number of facts which have a bearing upon the case have been obtained.

History.

It appears that the "Prairie du Chien Bridge Company" was incorporated under chapter 143 of Private and Local Laws of

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1855. Section 8 gave the company power to construct the necessary road on both ends leading to the bridge, and a definite width of right of way of 24 feet is mentioned.

The original act was amended by chapter 32 of Private and Local Laws of 1856, § 7 of chapter 143 being changed to read:

"The said bridge shall not be less than 20 feet wide—shall have a double track for wagons, a good substantial railing on both sides, and embankment and slough bridges from the south bank of the river to the high ground on said bank."

Chapter 133 of Private and Local Laws of 1866 also amended preceding acts, including among other things the following statement:

"The property and franchise of the Prairie du Chien Bridge Company having been sold pursuant to a judgment of the circuit court of Grant county, and John Lawler and Geo. M. Dickinson being now owners thereof, they and their associates and successors are hereby created a corporation and body politic, under the name and style of the Grant & Crawford County Bridge Company."

In this amendment the capital stock was limited to $100,000.

Mr. James Smith, it appears, was the next owner. The abstract of title indicates that the bridge changed hands about 1866 for a consideration of $10,500, but just what property was included in this transfer is uncertain. The present owners purchased the property in March, 1912, from Mr. J. A. Bieloh, who had operated it about ten years, the deed covering the toll road and bridge, the house at the north end of the bridge, and "that part of the land upon which said house stands now owned by said J. A. Bieloh."

The practical application of the factors which must be considered in this case does not involve intricate or impracticable procedure. The bridge is no longer a mere local utility, but is far reaching in its influence on travel. The fact that this bridge is the only one across the Wisconsin river between Prairie du Chien and Boscobel, a distance of approximately 25 miles, makes it of considerable importance, not only to residents throughout the surrounding territority, but to tourists as well.

No bridge is permanent, and the fact that it requires continuous upkeep should impress upon the bridge officials the ne-

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cessity for making adequate financial provision to care for the bridge, no matter what its cost or the efficiency of its construction. Respondent, it appears, from an inspection May 25, 1915, is endeavering to maintain the Bridgeport bridge in as good a condition as is possible with a wooden bridge of this nature.

By means of a theoretically perfect system of rates, each patron of the bridge would be charged an amount exactly proportional to the actual total cost of service rendered. This Commission has pointed out in its earlier decisions that items of cost may be divided into two general classes; namely, fixed charges, which are the direct result of the investment required, and operating expenses, which are incident to perform the required service after the investment has been made. For the purpose of this case, a separation of the expenses to classes as noted above is not deemed necessary.

Value.

A tentative valuation of the property of the Bridgeport Bridge Company to be considered in this case has been made by the Commission as of August 10, 1914. In this valuation the cost of reproducing the property and its present value are estimated to be as follows:

	Cost to Reproduce.	Present Value.
Toll road and bridges	$35,193	$22,431
House	1,500	1,200
That portion of the land on which the house stands that is owned by the bridge company	200	200
Total	$36,893	$23,831

Testimony indicates that in the past the bridge property has been more or less in the hands of speculators who have held it for short times, with the result that they expended as little as possible upon its upkeep during the periods of their ownership. The present owners contend that the bridge is not a toll bridge in the sense that such term is generally used, but in reality consists of four bridges with an accompanying fill of about ½ mile. In connection with the tentative valuation, the Commission has outlined the following summary of the elements included in the bridge property:

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1.	A wooden truss swing draw span	115′ 0″
2.	" " " fixed span on masonry piers	157′ 0″
3.	" " " " " " " "	165′ 6″
4.	" " pile trestle No. 1	327′ 0″
5.	An earth fill	180′ 9″
6.	A wooden pile trestle No. 2	266′ 7″
7.	An earth fill	951′ 8″
8.	A wooden pile trestle No. 3	196′ 10″
9.	An earth fill	919′ 6″
10.	A wooden pile trestle No. 4	69′ 6″
11.	An earth fill about	448′ 8″
	Total, about	3,800 feet

Respondent's representative stated that the property could not be built for less than $60,000, and that on a conservative estimate it is now worth $25,000, and that the present owner had purchased the property, at the time of a flood, when the owner evidently feared the entire works would be destroyed, for the sum of $6,000, but that he immediately found it necessary to expend over $1,000 in repairs, thus increasing his investment to over $7,000.

The present condition of a large portion of the property is fair or good, new flooring and timber bents having been placed in the early summer (1915), but a portion of the bridge must be rebuilt before many years. Assuming a present value of $23,831, when the property which must be replaced in a few years is deducted, it is found that only about $8,000 of property can be utilized in such reconstruction as must occur.

The details of a bridge are extremely important factors in the strength and life of the structure, particularly the end connections of the members. The three long spans and their piers are apparently good for some time to come, although it is impossible, of course, to determine the exact number of years of life left in them. The trusses themselves, especially in the covered portion of the bridge, are in good condition, showing little sign of decay. The exact life of timber is comparatively great under such conditions as obtained in the covered portion of the bridge. As noted by the Commission, the condition of the river piers will probably determine when the piers shall be rebuilt. The piers holding the superstructure, with proper maintenance, however, will be serviceable for some years. The scouring action of the river around the pier foundations is hard to determine at this time,

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but it is prevalent to the extent that a large amount of riprap is required each year for protection purposes.

It is estimated that, if parts of the bridge are not rebuilt within the next ten years, maintenance and renewal outlays somewhat as outlined below will probably be necessary.

1. Surfacing roadway or embankment	$1,300
2. Renewing trestles	4,370
3. Repairs to covered spans	2,100
4. Repairs to draw span	370
5. Renewing oak flooring plank on bridges and trestles three times	3,823
Total	$11,963

Assuming that the above items are prorated over the period, the average expenditure per year will be less than $1,200.

It is a misfortune that both repair and travel statistics are kept in such a way that it is usually impossible to determine whether continuous or periodic repairs, taking into consideration the character of the traffic, are more economical on a bridge. The annual cost of good bridges is not yet appreciated by most people. This actual annual cost is very largely a matter of maintenance, and it is remarkable that so little thought is given to what has been called "preventative maintenance."

This expression can be made clear by an illustration. If a wooden bridge like the one at Bridgeport is allowed to go without repainting until the timbers are covered with a dead coating and the paint on the trusses, bridge house, etc., shows flakes and bare spots, the wood will have deteriorated in many places, especially at the joints. If the paint is renewed with sufficient frequency, the wood is preserved and the bridge is kept in better condition with little or no more expense than is needed for good work at longer intervals. The draw span at Bridgeport shows this deteriorated condition in certain members, due to lack of this maintenance.

[1] That the bridge was in a badly deteriorated condition at the time of its acquisition by the present owners appears evident from the data available. In a former toll-bridge case investigated, it has been held doubtful by the Commission whether a utility is entitled to a return upon the cost new of a plant in the above condition, and for which the present owners could not

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have paid an amount approximating the Commission's "present value," if reasonable business judgment were exercised.

The statement that "the primary basis of any calculation as to the value . . . must be the money actually invested by the owners" cannot, it is believed, be interpreted to mean that when a man purchases a property which, due to peculiar circumstances, is in a precarious situation, for an amount which is only about one quarter its appraised value, that he shall be limited to a return upon only the money actually paid by him for the property, and not upon a reasonable present or depreciated value.

The figures of the tentative valuation as compiled by the Commission have been carefully analyzed and checked on a thoroughly balanced basis, and there seems to be no question that the fair value of the property is at least as great as its present physical value. Nor can the fact that the present owners paid but very little for the property when the same was purchased in any manner compel a lower valuation under the provisions of the law. All the property used and useful for the convenience of the public must be valued by the Commission. The law says nothing about deducting the value of property owned by the company but which originally cost it little or nothing. This Commission has previously discussed this point in a number of decisions, excerpts from which follow:

"For the purposes contemplated here, the Public Utilities law does not inquire into the manner in which property of utility corporations devoted to the public use was originally obtained, whether by purchase . . . . [or] gift . . . . The law simply compels the Commission to value this property and to consider this valuation in taking official action with respect to rates and service." Tighe v. Clinton Teleph. Co. 3 Wis. R. C. R. 117–126 (1908).

The Commission has discussed the appreciation element in making appraisals in the following citation:

"As the cost of reproduction of a plant usually plays perhaps the most important part in determining its value, it is more than likely that the owners would have to bear losses in case land and other property had depreciated instead of appreciated. It would seem only just that the rule should work both ways. Appreciations in value of the kind in question . . . are

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generally acknowledged as rightfully belonging to the owners of the property which has thus risen in value." State Journal Printing Co. v. Madison Gas & Electric Co. 4 Wis. R. C. R. 501, 579 (1910).

As evidence of the fair value of the property in this case, the investment made by the present owner does not seem to be controlling.

Traffic Study.

To make a proper rate adjustment in this case, it is necessary to have rather definite information as to the amount and character of the traffic over the bridge. The traffic census should determine the kind of traffic and also furnish a means, if possible, of estimating future traffic.

Records kept by the bridge tender which show the number of vehicles, teams, etc., passing the bridge each day, have been examined for one year, a period considered long enough to furnish dependable data for this investigation, and to show whether there are wide variations in the amount of traffic from day to day. An examination of data taken from the record for the two weeks from each of the months January, April, July, and October, 1914, shows that the traffic in winter is much lighter than in the summer in certain respects, but the average of all classes remains about the same. The following table shows the summary of the principal items noted in this analysis:

	Average Per Day.				Average Per Day Per Year.	Total Est. Patrons (Year).	Total Est. Revenue, Old Rates.
	Jan.	Apr.	July.	Oct.			
2 horse vehicles..	14	13	7¾	16	12	4,750	$2,375.00
Automobiles	2	1	9	3	4	1,800	900.00
1 horse vehicles..	5½	2½	4 4/10	2½	3½	1,500	375.00
Pedestrians	2	1	1	1	1	400	40.00
Horse and rider..	.....	.....	.....	.....	.....	165	41.25
Led horses	.....	.....	.....	.....	.....	130	13.00
Swine	.....	.....	.....	.....	.....	100	3.00
Cattle	.....	.....	.....	.....	.....	300	15.00
Motorcycles	.....	.....	.....	.....	.....	25	6.25
Bicycles	.....	.....	.....	.....	.....	10	1.00
Ave. daily receipts	$9.66	$8.10	$10.27	$ 10.79	$9.71	Total—	$3,769.50

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In general, two horse vehicles make up about 59 per cent of the vehicle traffic, and automobiles are second with 22 per cent.

[2] Topographical conditions along a stream like the Wisconsin vary sufficiently to affect greatly the bridge problems of the different parts of the state, so that the traffic data and expenses of one bridge are hardly comparable with those of another. The character of the country surrounding Bridgeport has considerable influence on the amount of traffic crossing the bridge. It appears that there is a rough or rugged, hilly country on the south side of the river and a hamlet of about three hundred on the north. In drawing any conclusions, then, regarding the traffic, we must be guided to a large extent by the geographical location of the bridge with relation to its patrons.

Those patrons who come to Bridgeport only five or six times a year do not feel like buying a hundred trip ticket at $35. It appears probable that in some cases throughout much of the territory naturally tributary to Bridgeport residents trade at other towns for the reason that they object to the bridge toll, notwithstanding that many commodity prices are lower there than in near-by towns. Testimony was introduced at the hearing with regard to the possible increase in traffic which improved and cheaper service would bring. It was asserted by respondent that although a large area lying south of the Wisconsin river is served by this bridge, the increase in traffic from this section alone, by reason of such reductions, would be slight.

This toll bridge, however, is on the "Lake-to-River Road" from Milwaukee to Prairie du Chien, and although other traffic has remained about the same, showing a slight increase or decline depending upon the markets and the crops raised and the general tone of business, automobile traffic has increased somewhat the past year according to statements brought out at the hearing, due to the use of this road by tourists. This main line trunk road between the middle west and eastern points which is now properly marked for tourist traffic will undoubtedly be used more extensively in the future than has been the case in the past. With the continued improvement of this road, some sections of which are still in poor condition, this route will undoubtedly develop in popularity, though not as greatly as other routes which cross other toll bridges in the south central part of the state.

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There has lately been a movement towards the building of a bridge across the Wisconsin river at Wauzeka. The attitude taken there towards the establishment of this bridge appears to be favorable, as such a proposed bridge would result, among other things, in a saving of several miles of distance over bad or indifferent roads for a considerable community. The respondent in this case presented a statement regarding this proposition, alleging that the commercial interests of Bridgeport and of the toll bridge would thus be materially damaged. This proposed bridge, if built, will be about 11 miles above Bridgeport, and would undoubtedly take away some of the patronage of respondent's bridge. Just what percentage would be affected, however, we cannot tell.

Accidents.

[3] At the time of this investigation the record of only one personal accident claim arising from the use of the bridge could be found. This occurred in 1912, during the period Mr. Bieloh owned and operated the toll bridge. This claim was settled for $200.

Claims against bridge companies may be divided into three classes: (a) For loss or damage to the load carried, (b) for injury or death, and (c) for damages to property. Such expenses which may occur at any time may often amount to a substantial percentage of the total operating expenses of the bridge, and are expenditures for which no return can be figured.

The Commission, in making an investigation of the rates of such public utility, must take cognizance of the probability of damage to the patrons and the resultant claims. When repairs are being made to the bridge, such as the replacement of planks, guard rails, substructure, etc., accidents are very likely to happen, as past experience has proved in the operation of many such bridges.

[4] Of accidents to the bridge itself there have been many. In 1906, 133 feet of the pile trestle just south of the covered bridge was carried out by ice, requiring an expenditure of about $2,000. The draw which was weakened was rebuilt the following year at a cost of about $1,700. Mr. Bieloh further reports that during his ownership at every period of high water it cost from

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$200 to $400 to repair grades. Bank protection is a continual source of expense for upkeep. Ice breakers must be replaced frequently, or more serious accidents may result to the bridge. One toll bridge in the state was partially destroyed by a tornado. A covered wooden bridge, too, is liable to the further hazard of fire. The excessive scouring action of a flood may undermine the stone piers. Many of these contingencies, while not likely to happen, result from extraordinary conditions which can hardly be foreseen, and must be given some consideration in determining the rate of return to be allowed.

Complaint is made by respondent that at various times patrons run teams across the bridge, contrary to law, disregarding the signs at either end of the bridge, which call attention to the penalty for driving faster than a walk. Teams, droves of sheep, cattle, and swine, etc., if crossing on the run or at a trot, specially on bridges of light construction, will cause the same to vibrate much more than if the passage is slow, and if continued may eventually cause the collapse of the structure. The theory that much damage may be caused by fast motor traffic, due to the impact lent by the bounding motion of the machine, appears well founded, the rolling action of the wheels at the speed now employed for self-propelled traffic being no longer true rolling, but more in the nature of a rhythmical percussive action, the wheels striking the roadway at regular intervals. This is especially true when passing over worn planking. The impact of blows, even when lightly dealt, if continued, will cause intense wave deformation, so that heavy stresses will be thrown on the supporting members, and unless they are sound, and even then the chance of rupture remains, disaster may result. This subject is too important to be lightly regarded, and if the warning posted is to be of any value it should be heeded by all patrons of the bridge. Violators should be prosecuted notwithstanding that such acts may cause much personal animosity.

Respondent holds that the foregoing hazard should be considered in passing upon the equitableness of the toll rates. No report is at hand giving the safe live load for the structure at Bridgeport.

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Income Account.

The wide variation in the traffic from day to day results in receipts fluctuating from $1.50 to $48 *per diem*, while the receipts from month to month, however, are more uniform, the average for twenty-eight months having been $304.21.

For the period April 1 to December 31, 1912, the total receipts were $2,727.40. For the year 1913 the receipts totaled $3,726.69, and for the period January 1 to July 31, 1914, they amounted to $2,063.83. Redistributing these earnings in order to get two complete fiscal years, it is noted that for the year ended June 30, 1913, $3.697.63 toll was collected, while for the following year ended June 30, 1914, $3,749.04 toll was collected, the average of the two years' receipts being $3,723.34.

[5] To the receipts from tolls we have added the rental value of the house occupied by Mr. Lathrop, estimated to be about $144 per year. It is necessary to have a dwelling near the bridge for the accommodation of the gateman or toll master, hence this house, although detached, is considered really a part of the bridge property.

The annual receipts are then summed up about as follows:

From tolls	$3,723.34
From house	144.00
From telephone lines—allowance	12.00
	$3,879.34

A representative of respondent testified that the company cannot afford to reduce the toll for the reason that it is compelled to do considerable work upon the so-called "Bridgeport Hollow Road" at various times in order to retain traffic. This road, it appears, extends around the foot of a bluff, and being usually neglected by the township through one end of which it passes, it becomes so bad that it is almost impassable, cutting off traffic from the bridge. It is true that bridge officials are charged with the responsibility of providing safe traffic arteries both on the bridge structure and its approaches, but in this instance it appears to us, however, that the expense incurred for this work, although small, should not be borne by the respondent, but should be paid by the town. A compromise, however, has now been effected by the interested parties, so that each will stand a part of the expense of putting this road in good condition.

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The waterway traffic does not at present require the opening and closing of the draw of this bridge. It is doubtful if the mechanism of the draw under present conditions will be used as often as once a year, so that no delay to vehicle traffic by operation of this equipment is anticipated. Delay due to other causes is discussed later.

Expenses.

For various reasons the Commission has not until this time formulated annual report blanks for such toll-bridge utilities as are now included under the jurisdiction of the Commission, and hence we have no reported expenses available. Such expenses as have been noted cannot be accepted for purposes of this case without being tested very carefully in accordance with the experience of other companies somewhat similarly situated, or with other data bearing upon the situation. Unfortunately the greater portion of the data at hand is so incomplete that it is practically impossible to estimate expenses with any degree of assurance as to the accuracy of the results.

One man is employed to collect tolls during the day, and Mr. Lathrop attends to such duties at night. The annual operating expenses as estimated from such data as we have available are approximately as follows:

Expenses.	
Gateman	$1,095.00
Lights	18.25
Maintenance	500.00
Insurance	37.50
Total above	$1,650.75

[6] To the above expenses must be added allowances for taxes, depreciation, and interest on the investment. Testimony presented at the hearing held in connection with this case indicates that the taxes will amount to about $75 per year. The composite life of the property is estimated at twenty-five years. Adequate allowance for depreciation will not be less than $1,050 per year, which appears conservative when consideration is given to the fact that contingencies and losses due to extraordinary causes may occur at any time.

Respondent submitted an estimate of the annual operating expenses of the bridge property, differing in certain particulars

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from the Commission's statement. Respondent's exhibit is as follows:

Annual Operating Expenses.

Two toll men	$1,095.00
Repairs	500.00
Insurance	37.50
Total above	$1,632.50
Taxes	$ 75.00
Sinking fund for rebuilding	1,000.00
Interest (8% on $7,000)	560.00
Total expenses	$3,267.50
Respondent's estimated annual receipts	$3,650.00
" " " expenses	3,267.50
Excess of estimated receipts over expenses	$382.50

[7] The average amount available for interest and profit under the Commission's estimate is about $1,052 per year when we do not take into consideration an allowance for general supervision. The rate of return upon a reasonable earning value of the property of $23,000 is only 4.6 per cent, assuming $1,052 available for this purpose. Such a return of 4.6 per cent on a valuation of $23,000 cannot be called excessive, especially when it is considered that the amount available for interest and profits is partly a matter of estimate. Throughout the period of the life and development of enterprises such as this toll bridge, great risks have been incurred. Probably, viewing the past and considering both the failures and successes of such enterprises, the capital invested has received a smaller total profit than in the average of mercantile, commercial, manufacturing, or trading enterprises.

Money loaned on real estate in the vicinity of this bridge brings from 6 per cent to 7 per cent on the very best of security, hence a return on bridge property, taking into consideration the dangers connected with it, of less than this amount cannot be considered excessive. Taking into account the hazard of wooden-bridge construction and the possibility of failure due to ice, floods, fire, etc., and the contingencies of operation and maintenance for the risk involved, such a return as respondent is now receiving is inadequate.

That such bridges as the one we are concerned with in this case have been one of the great factors in the development of certain

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sections of this country cannot be disputed. There are extensive sections of this state which require the services of such companies, and which, without them, would be at a great disadvantage as compared with more favorably situated sections.

[8] An examination of the rate schedule shows two discrepancies which would seem to require some change. Public stock buyers, now allowed to pass free of charge, must be assessed the regular rates. The rural mail routes ought to be assessed either the single horse vehicle rate or team rate, unless a yearly contract basis open to all users is agreed upon. Rural mail contracts usually contain a statement, it appears, as follows: "Acceptance of this proposal is effective from the date of it, and the rate named will be continued in force until changed or the service is discontinued."

In determining a schedule of charges to meet the needs of a toll bridge, and to obtain them from those who are largely responsible for the greatest wear and tear, it may be that a general and graduated axle-weight tax, to apply to all vehicles, might be formulated. In the instant case, however, the absence of a traffic survey made for the purpose of securing the necessary data upon upon which to base such rates, has precluded the introduction of such a schedule.

While it is not believed equitable to make any material horizontal reduction in rates at this time, it appears to the Commission that some consideration might be given to the use of multiple trip tickets. The scale of prices for different classes of consumers at Bridgeport, however, does not appear unreasonably adjusted. The following table suggests a number of multiple trip tickets which it might be advisable to issue. This outline is, however, only tentative, as much of the necessary data to substantiate the establishment of such rates is not available, and we do not believe we should order the establishment of multiple ticket rates except as stated in the order:

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Multiple Ticket Rates.

			Automobile Two Horse Vehicles			Motor Cycles One Horse Vehicles Horse and Rider			Bicycle Led Horse		
			Rate per Ticket Cts.	One Way Rate Cts.	Total Cost.	Rate per Ticket Cts.	One Way Rate Cts.	Total Cost.	Rate per Ticket Cts.	One Way Rate Cts.	Total Cost.
100	Round Trip Tickets	....	35¢	17½	$35.00	20	10	$20.00	—	—	—
50	"	"	37	18½	18.50	21	10½	10.50	—	—	—
25	"	"	40	20	10.00	22	11	5.50	18	9	$4.50
10	"	"	45	22½	4.50	24	12	2.40	—	—	—
1	"	"	50	25	.50	25	12½	.25	20	10	.20

Service.

Complaint has been made that the service is poor, due to the gate being frequently closed and the operator not at hand. Offsetting this complaint is a statement by an equal number of patrons, alleging that service has been satisfactory. Our investigation discloses few delays due to absence of the operator.

The tolls are collected at the north, or Bridgeport, end of the bridge. As noted, one man is employed to collect tolls, and he is on duty about ten hours per day. Mr. Lathrop or his son collects the toll when the gateman is off duty. The regular gateman, when there are trains at the railway station, closes the gate and sometimes helps the agent, as it is impossible to cross the bridge when trains are in, due to the fact that the railroad passes in front of the Bridgeport end of the bridge, effectually blocking all passage. It appears that on an average about 16 trains a day pass this point, the majority of which stop, so that as a matter of safety the gate must be kept closed. This procedure, we believe, should be continued.

In certain instances the occasional absence of the bridge tender from his post, usually in the early morning or in the evening, causes some slight delay to the traffic. At night the usual practice is to close the gate from which a pull wire leads to a bell at Mr. Lathrop's house. Any one who wishes to pass may either ring the bell or call out. As arranged at present the pull wire is not readily found, and there is no sign advising strangers of the proper procedure at night. Most people, it appears, call instead of ringing. Mr. Lathrop maintains that at night the noise of vehicles crossing the bridge from the south always awakens him, so that he is able to reach the gate almost as soon

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as the vehicle itself. No order regarding service appears necessary.

It is therefore *ordered* that the respondent, the Bridgeport Toll Bridge Company, shall establish and place in effect the following multiple trip ticket rates open to all patrons desiring to use such tickets.

	Automobile 2 Horse Vehicle. Rate.	Motor Cycle, 1 Horse Vehicle Horse and Rider. Rate.	Bicycle, Led Horse. Rate.	Pedestrian. Rate.
200 Round Trip Ticket	$60.00	———	———	———
100 " " "	35.00	$20.00	———	———
50 " " "	20.00	10.50	———	———
25 " " "	11.25	5.50	$4.50	$1.25

It is further *ordered* that all other rates remain as at present, except that discrimination must be discontinued.

This order shall take effect and be in force on and after October 1st, 1915.

Railroad Commission of Wisconsin, by Halford Erickson, Carl D. Jackson, Walter Alexander, Commissioners.

WISCONSIN RAILROAD COMMISSION.

CITY OF GREEN BAY

v.

BAY SHORE STREET RAILWAY COMPANY et al.

Rates — Street railways — Transfers.

1. Two street railway companies operating within a city were ordered to establish a joint fare of 5 cents for the transportation of passengers within the city limits, by giving and honoring free transfers, upon a finding by the Commission of a public need for free transfers, and that such requirement would not so unduly reduce the earnings of the companies as to be unjust to them or as to be against the public interest.

Rates — Street railways — Apportionment of revenues arising from carrying transfer passengers.

2. Upon directing the establishment of a joint 5 cent fare within the city limits, by giving and honoring free transfers by the two

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street railway companies operating in the city, the Commission ordered that the entire fare receipts from transfer passengers should be given to the one company upon finding that the average distance traveled on its lines by transfer passengers would be much greater, and that the maximum distance a transfer passenger could ride on the line of the other company was about five blocks; that it is not required by its franchise to furnish free transfer privileges while the other company is required to do so; and that it furnishes the power, equipment, operators, etc., for the operation of the other company for a compensation that is barely adequate to cover the cost of the service rendered, and that the award of the entire transfer fare receipts would tend to equitably adjust matters.

[August 20, 1915.]

PETITION by the City of Green Bay for the establishment of a joint 5 cent fare within the city limits by two street railway companies operating in the city by giving and honoring free transfers over the lines of the other company; order granting the establishment of such rate and awarding the entire fare receipts from transfer passengers to one company.

By the **Commission**: The petition in this matter was filed by the common council of the city of Green Bay, by Wm. Cook, city attorney, June 21, 1915. The prayer of the petition is in substance that the Commission order the respondent companies, each of which operates a street railway within the city of Green Bay, to establish, by the giving of free transfers, a joint fare of 5 cents for the transportation of passengers within the city limits.

The petition alleges, more fully, that the Wisconsin Public Service Company is a corporation operating street cars on Main street and other streets in the city of Green Bay. That the Bay Shore Street Railway Company is a corporation operating a street railway line in the city of Green Bay from the intersection of Twelfth and Main streets, where it connects with the line of the Wisconsin Public Service Company, northerly along Twelfth street to the city limits, a distance of about five blocks, and thence for about a mile and a half beyond the city limits to a summer resort known as Bay View Beach.

That the common council of the city of Green Bay, on January 18, 1909, adopted an ordinance granting an indeterminate permit to the Bay Shore Street Railway Company to construct

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and operate such street railway, and that the said company did construct and is operating such street railway. That by the ordinance the Bay Shore Street Railway Company is required to operate on an hourly schedule from May 15th to September 15th of each year. That among other matters contained in the ordinance of January 18, 1909, there is the following provision:

"Section 12. The said Bay Shore Street Railway Company shall charge a 5 cent fare on its line to and from Bay Beach, except that persons taking the cars of said company at any place within the city limits, and going to any other point within the city limits, will be given a transfer to the Green Bay Traction Company's line, and persons taking the cars of the Green Bay Traction within the limits of said city and going to any point on this company's line within the city limits will be given a transfer by said traction company to the cars of said Bay Shore Street Railway Company without extra charge." That the Wisconsin Public Service Company has succeeded to the Green Bay Traction Company named in the ordinance.

That the cars of the Bay Shore Street Railway Company have been operated since May 15, 1915, but that neither company has issued transfers in accordance with the provisions of the ordinance. That the section of the city along the line of the Bay Shore Street Railway Company is quite thickly populated, that many of the residents of this section work at places reached by the lines of the Wisconsin Public Service Company, and that such persons would be greatly convenienced by transfers between these lines. That irrespective of the ordinance quoted, the lines of the respondent companies are so closely connected that passengers should be permitted to ride anywhere within the city over either or both lines for the sum of 5 cents, and that the refusal of respondent companies to issue transfers to such passengers is unreasonable and unjust.

No formal answer was filed.

There appeared to be no dispute between the parties as to the facts, nor any desire on the part of respondents to contest the issuing of such order as the Commission might deem proper in the premises, and as the parties desired to avoid the necessity of a hearing and desired to expedite the issuing of an order in

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the matter, they all joined in waiving a hearing and submitting a stipulation of facts.

The stipulation, in addition to substantiating the matters set forth in the petition, stated among other things that the line of the Bay Shore Street Railway Company was constructed under the provisions of the ordinance of January 18, 1909, heretofore noted, but that the Wisconsin Public Service Company never consented to the passage of the ordinance, nor was it consulted by the city in regard to any invasion of its rights by the passage of the ordinance.

It was further stipulated that the rendering of reasonably adequate service by the Bay Shore Street Railway Company required that passengers of such railway riding wholly within the city limits should be given transfers permitting a ride anywhere within the city for the sum of 5 cents, and that transfers should be issued and honored by each of respondent companies to and from passengers riding wholly within the limits of the city of Green Bay in continuous passage.

[1] The question is therefore presented whether the Commission should order the giving and honoring of free transfers by the respondent companies, so that passengers desiring to ride wholly within the limits of the city of Green Bay on the street railway lines of the respondent companies may do so for a single fare of 5 cents. The situation is similar to that presented in the case of Neenah v. Wisconsin Traction, Light, Heat & P. Co., 6 Wis. R. C. R. 398 (1911). In that case the Commission ordered the establishment of a joint 5 cent fare. The reasoning there advanced in the main applies here. In the present proceeding, further, the respondents recognize the public need for free transfers, and do not desire to contest their establishment if the Commission should consider it to be desirable.

Without entering in any detail into an examination of the effect of such a transfer privilege on the financial condition of respondents, it may be stated that there is no appearance that it would so reduce the earnings of the companies as to be unjust to them or as to be against the public interest.

It is therefore the opinion of the Commission that the respondent companies, having refused and neglected to grant and

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honor free transfers good for a continuous ride anywhere within the city of Green Bay, should be required to so do.

With the establishment of the transfer privilege, the question arises of how the fares collected from passengers using transfers shall be apportioned between respondent companies. By the stipulation of the parties the Commission is requested to provide for such apportionment in case the petition for the transfers should be granted.

[2] The stipulation represents, as noted, that the Bay Shore Street Railway Company was constructed under an ordinance requiring free transfers, but that the Wisconsin Public Service Company never consented to such ordinance. The stipulation further states that the respondent Bay Shore Street Railway Company is without electric power to operate its line, and that it has not sufficient equipment or employees to render adequate service to the public, and that in view of these facts, out of deference to public opinion, the Wisconsin Public Service Company has entered into a contract with the Bay Shore Street Railway Company, a copy of which is annexed to the stipulation, to furnish the latter with power, equipment, operators, etc. The stipulation continues that the consideration provided by this contract to be paid to the Wisconsin Public Service Company for such services is barely, if at all, adequate to cover the cost of the service rendered, and that it leaves little or no profit to the Wisconsin Public Service Company. It is stipulated that, in view of these services rendered by the Wisconsin Public Service Company for such small compensation, and of the franchise requirements under which the Bay Shore Street Railway Company was constructed, if the Commission should order the giving of transfers it would only be just that the Bay Shore Street Railway Company should carry passengers transferred from the Wisconsin Public Service Company without charge therefor, and that, on the other hand, the latter company should be paid 5 cents by the Bay Shore Street Railway Company for every passenger transferred from said company and carried by the Wisconsin Public Service Company.

The apportionment, between the carriers concerned, of revenues arising from the carrying of transfer passengers, is primarily a matter for the carriers to settle, and in the absence of

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an appearance that the public interest is adversely affected the wishes and beliefs of the carriers should be respected. Both companies herein concerned, and the petitioner, have stipulated that in their belief the Wisconsin Public Service Company now receives barely adequate compensation from the Bay Shore Street Railway Company for services rendered to the latter, and they all agree in advising that the fares be apportioned with the view of remedying this situation.

An investigation of the terms of the contract between respondents, and of other facts connected therewith, leads us to believe that the compensation provided to be paid to the Wisconsin Public Service Company for its services to the Bay Shore Street Railway Company may well be as contended above. The suggested apportionment of fare receipts would undoubtedly tend to remedy this situation. It should also be noted in support of the suggested division of fare receipts that the maximum distance a transfer passenger could ride on the line of the Bay Shore Company is but about five blocks, and the average ride would be less, while the average distance traveled on the lines of the Wisconsin Public Service Company would probably be very much greater than this. For the reasons urged, and others, it will be ordered that the entire fare receipts from transfer passengers shall be given to the Wisconsin Public Service Company.

It is therefore ordered that the Bay Shore Street Railway Company and the Wisconsin Public Service Company discontinue their present practice of each charging a fare of 5 cents for one continuous passenger ride wholly within the city limits of the city of Green Bay on the street railway lines of both companies, and that they substitute in place thereof a system of transfers whereby any passenger taking the cars of either company at any place within the said city limits shall, upon the payment of a 5 cent fare, be entitled to a continuous ride anywhere within the said city limits over the lines of both respondent companies.

It is further ordered that the Wisconsin Public Service Company retain the full amount of all fares received by it from passengers, to whom it shall issue transfers as herein ordered, and that the Bay Shore Street Railway Company shall pay to

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the Wisconsin Public Service Company the sum of 5 cents for every transfer issued by the Bay Shore Street Railway Company and honored and accepted by the Wisconsin Public Service Company.

The respondents shall comply with this order within twenty days after service thereof.

Railroad Commission of Wisconsin, by Halford Erickson, Carl D. Jackson, Walter Alexander, Commissioners.

NEW JERSEY COURT OF ERRORS AND APPEALS.

CITY OF PASSAIC

v.

BOARD OF PUBLIC UTILITY COMMISSIONERS et al.

CITY OF PATERSON

v.

BOARD OF PUBLIC UTILITY COMMISSIONERS et al.

(— N. J. —, 95 Atl. 127.)

Certiorari — Gas — Rate order — Review on merits.

1. Certiorari is the proper remedy of municipalities to obtain relief from an order of the Public Utility Commission fixing the rate to be charged the public for gas, where they claim that the rate fixed is too high; and the court should determine the question on the merits.

Appeal and review — Reversal — When remand unnecessary.

2. Upon the reversal of a judgment dismissing the petition of a city in certiorari to review the order of a Public Service Commission upon the ground that certiorari was not the proper remedy; it is not necessary to remand the case to the lower court for findings of fact, if the petition of the city alleging that the rates fixed were too high was heard together with a petition of the gas company that the same rates were too low, and the court thereupon made findings of fact which revealed its view that the rate was substantially correct on both sides.

Valuation — Capitalized earnings as basis.

3. A Commission, in allowing in a rate case a return of 8 per cent upon a certain valuation, does not really fix a higher valuation because of the fact that the income produced by the 8 per cent return will be capitalized in the public markets at 5 per cent in dealing with securities, where the 5 per cent capitalization is based on an unregulated rate.

[June 21, 1915.]

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REHEARING on appeal by municipalities from a judgment of the Supreme Court dismissing their writs of certiorari as not being the proper remedy to obtain relief from an order of a Public Utilities Commission fixing the rates to be charged the public for gas by a public utility company; judgment reversed and order affirmed on the certiorari prosecuted by the cities.

The judgment of the supreme court affirming the order on a writ of certiorari prosecuted by the utility was affirmed on a rehearing on the appeal by the utility, — N. J. —, L.R.A. —, ante, 251, 94 Atl. 634. For former opinion on which rehearings were given, see — N. J. —, L.R.A. —, 92 Atl. 606.

Appearances: George L. Record (Edward F. Merry and Albert O. Miller, Jr., on the brief) for appellants; Frank Bergen and Thomas N. McCarter (Robert H. McCarter and R. V. Lindabury, on the brief) for appellees.

Per Curiam:

The decision rendered on the appeal of the Public Service Gas Company, affirming the judgment of the supreme court for the reasons stated in the opinion of that court (84 N. J. L. 463, 87 Atl. 651), closes the record before us upon the writ of certiorari sued out by that company.

[1] Two other records, however, are still before us for disposition in this litigation. They embody the judgments of the supreme court dismissing the writs of certiorari sued out by the cities of Paterson and Passaic, and the appeals from the judgment of dismissal in each case. The claim of these cities in those cases was that the rate fixed by the Board was unreasonably high; the gas company, resisting this, maintained that it was not. The supreme court, as will appear by its reported opinion, refused to consider this question on the merits, taking the view that the only form of action was mandamus, and that even that remedy was inapplicable, as it would amount to dictating in advance to an inferior tribunal what judgment it should pronounce. 84 N. J. L. 465. On the former hearing we assented to that view. Further consideration leads us to the conclusion that it was a mistaken one.

When the litigation, consisting of three separate actions, is analyzed, it will appear that the gas company on the one hand,

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in its suit, challenged the determination of the Board as having fixed an unjust and unreasonable rate in that it was too low; while the two cities, in their separate and independent actions, challenged it as fixing a rate claimed by them to be unjust and unreasonable in that it was too high. Each party was entitled to a formal determination of the claim advanced by it. The judgment on the claim of the gas company in its suit was no adjudication of the claim of the cities in their suit. Their position will be made clearer if it be assumed that the gas company had accepted the rate fixed by the Board. Looking at the history of the litigation, we find that the company was charging a rate fixed by itself; the cities complained to the Board that it was much too high to be just and reasonable. The Board awarded part of their claim and denied the rest. They were then in the position of a plaintiff who has obtained judgment for part, but not all, of what he claimed, and is legally aggrieved by a denial of the remainder. They were as much entitled to challenge the determination of the Board as if it had sustained the company's rate without modification. We think, therefore, that the supreme court should have judicially determined the cases presented by the writs of the cities on their merits; and if it adjudged the rate not unreasonably high, it should have affirmed the order on the writs of the cities; if it found that the rate in fact was unreasonably high, its duty was so to declare, and to set aside the determination of the Board, at least so far as it involved a finding that the 90-cent rate was not too high, and remand the matter to the Board for further hearing and determination.

[2] The question remains as to the disposition of the present appeals. Our view being that the dismissals by the supreme court were erroneous, the judgments on the city writs must be reversed; and if the supreme court had not considered the facts and expressed its views fully thereon, it might perhaps be necessary to remand the case to that court to the end that it should find the facts, as in the first instance it should do. But in the present litigation, taken as a whole, the facts have all been found. The petitions of the cities were heard and decided together by the Utilities Board; the certioraris, three in number, were heard and decided together by the supreme court; and,

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having before us the opinion of that court in which the facts are fully found for the purpose of the company's certiorari, it would be a work of supererogation and a waste of time to require that court to repeat what it has previously found on precisely the same evidence in a cause to which these same litigants are parties. We therefore treat the findings of the supreme court for the determination of the gas company's case as its findings in the cases now before us.

Turning, then, to the opinion of the supreme court, it will be seen that that court considered somewhat exhaustively, and pronounced its finding of the facts involved in, every point made by the cities on their appeals. This is the case with respect to limiting value to cost of reproduction (84 N. J. L. 475); value derived from consolidation of plants (84 N. J. L. 477); total value of tangible property (84 N. J. L. 476); allowance of 30 per cent for going value (84 N. J. L. 476–479); franchise, which the supreme court disallowed (84 N. J. L. 482); good will, which the Board rejected; rate of return, which at no stage of the case has been seriously questioned, the Board having fixed 8 per cent and the cities inclining toward 7 per cent, but expressly conceding in their brief that some discretion must be exercised by the Commission; and outstanding securities, as to which the opinion of the supreme court is as favorable to the cities as could be asked (84 N. J. L. 482–485). The treatment of these phases of the case by the supreme court reveals plainly the view of that court that the valuation was substantially correct on both sides, the rate of return fair, and the resulting rate to consumers fixed by the Commission fair both to the company and to the consumers. In that view we concur.

[3] An additional point was raised at the reargument, to wit, that as the Commission allowed the company a return of 8 per cent on a valuation of approximately $5,000,000, and it appeared that the public markets would capitalize this income at 5 per cent in dealing with the securities, the real value set by the Commission is $8,000,000. But the evidence relating to 5 per cent capitalization, as counsel admit, is based on an unregulated rate, and not a regulated one, and is therefore of little or no value in an inquiry of this character.

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The judgments of the Supreme Court brought up will be reversed, and on the certioraris prosecuted by the cities the order under review will be affirmed.

CALIFORNIA RAILROAD COMMISSION.

FRANK TURNBULL COMPANY

v.

SWEETWATER WATER COMPANY.

[Decision No. 2644; Case No. 472.]

Service — Power of Commission — Compulsory taking over of water system.

1. The California Commission is without power to compel a water company to take over and operate a system serving a territory which it does not hold itself out to serve.

Service — Adequacy — Water supply to distributing company.

2. A water company which has merely contracted to deliver water in wholesale quantities to the pipes of another company will not be compelled, at considerable expense by way of pumping or other device, to furnish the latter company a better service than is provided for direct consumers on other parts of its own system.

Service — Water — Extension of service to territory of distributing company.

3. A water company which is unable to supply an adequate quantity of water to another company to which it has contracted to deliver water at wholesale will not be ordered to extend its system into the territory of the distributing company, where the supply of water does not justify the extension of its system to territory nearer at hand, and where there would be no just reason for granting the extension in the one case and denying it in the other.

[July 30, 1915.]

REHEARING upon an order granting the application of the petitioner to compel the defendant to purchase its plant; reversed and application dismissed.

Appearances: Edgar A. Luce and Harrison G. Sloan for complainant; Hunsaker & Britt, A. H. Sweet, and F. S. Jennings for defendent; Johnson W. Puterbaugh for National City; F. B. Andrews for Chula Vista.

Edgerton, Commissioner: This is an application for rehearing made by Sweetwater Water Company, defendant.

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The Commission heretofore made its order to the effect that defendant, Sweetwater Water Company, accept the offer of Frank Turnbull Company to convey a small water distributing plant located near the city of San Diego, and after such conveyance said defendant was ordered to operate this plant and to accept and serve as its own consumers, the consumers located on the Turnbull system.

A hearing on this application was had, evidence was introduced, and arguments made, and the matter is now submitted.

I joined in the order complained of, but upon more mature reflection and consideration of this case, I am convinced we should recede from the position taken therein, and the Commissioner who wrote the decision on the former application agrees with me in this position.

[1] I believe that the only power of the Commission in the premises is to order Sweetwater Water Company, defendant, to produce better wholesale service at the point of delivery into the pipes of the Turnbull company, or to extend its own system into the territory covered by the Turnbull company, and thereupon to serve the Turnbull consumers directly from its own system. I do not believe this Commission has power to compel defendant to accept a conveyance of the Turnbull system and thereupon to operate it.

[2] The evidence makes it clear that defendant, Sweetwater Water Company, has never obligated itself to do more than to deliver water wholesale at a designated point into the pipes of the Turnbull company. In fact, the evidence shows that the defendant has, with great care, safeguarded itself against any claim that it had agreed to furnish the territory covered by the Turnbull system with water direct.

The service furnished the Turnbull company appears to be as good as is possible under all the circumstances, unless defendant were compelled to go to a very considerable expense by way of pumping or other device, to increase pressure at the point of delivery. If defendant were compelled to do this it would mean that a better service would be compelled to be given the Turnbull company than is provided for the direct consumers of defendant on other parts of its system. Therefore, I do not believe that the defendant should be ordered to improve this service.

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[3] To adopt the other alternative of ordering defendant to extend its system and service into the territory now served by the Turnbull company would open the way to immensely increase the territory to be served by defendant's plant, as there are many thousands of acres located as close or closer to defendant's system than the Turnbull company lands, and if extension be compelled to this property, no just reason could be given for refusing an extension to large amounts of other property.

When it is remembered that this Sweetwater system, according to the testimony in this and other matters before the Commission, is taxed by existing consumers and those who have the right to demand water from it almost to capacity, it does not seem just or safe at this time to order any extension of applicant's system.

The cities of National City and Chula Vista intervened in this proceeding at the hearing, and protested vigorously against any new consumers being taken on by defendant, Sweetwater Water Company, because it was insisted that new consumers would deplete or endanger the supply of present consumers.

The evidence shows that the consumers on the Turnbull system do not get good or adequate service, but I believe the full responsibility for this situation rests upon the Turnbull company. It laid out this tract of land, made its contract for the delivery of water wholesale with the defendant company, installed its own water distributing system, and sold a part of its land to people who made their homes thereon, undoubtedly believing that the water supply would be adequate.

It will be possible for the Turnbull company, by the expenditure of a comparatively small sum of money, to erect a tank to provide a water supply for the people whom it has induced to locate on its lands, and this I believe to be its duty.

I recommend that the order heretofore made be annulled and the complaint herein be dismissed.

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CALIFORNIA RAILROAD COMMISSION.

IN RE CASTRO POINT RAILWAY & TERMINAL COMPANY.

[Decision No. 2646; Application No. 1721.]

Public utilities — Railroads — Quarry line.

1. A corporation authorized to construct 2 miles of railroad from a quarry to a connection with a belt-line railroad in a city, and used for the purpose of carrying passengers to a ferry, but chiefly to carry shipments of rock from the quarry bunkers, is a public utility within the jurisdiction of the California Commission.

Security issues — Construction of railroad — Good faith.

2. Upon application for authority to issue capital stock to repay advances made for the acquisition and construction of a railroad from certain quarries to a point of connection with another road, and to provide funds for the completion thereof, an objection having been made that the company was not proceeding in good faith, but merely for the purpose of condemning certain wharfage property, such issue was authorized, provided that none of the stock should be issued until the company should have completed all or a substantial unit of its proposed land, and should have secured from the Commission a supplemental order approving the same and determining the amount thereof, it appearing that, although the road would not pay a return upon the investment for some time, it would be considerable benefit to the quarries interested.

[July 31, 1915.]

APPLICATION of the Castro Point Railway & Terminal Company for an order authorizing the issuance of 890 shares of capital stock at the par value of $100 per share to repay moneys advanced to the aggregate of $39,473.18, for the construction of a railroad and to provide for its completion; granted upon condition that the company demonstrate that it is proceeding in good faith.

Appearances: McCutchen, Olney, & Willard, by F. P. Griffiths, for applicant; Reed, Nusbaumer, & Bingaman, by E. Nusbaumer, for Richmond Wharf & Dock Company, Intervener.

Loveland, Commissioner: This is an application of Castro Point Railway & Terminal Company for authority to issue 890 shares of capital stock of the par value of $100 per share, for the

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purpose of discharging certain outstanding indebtedness, and to provide funds for the construction of railway facilities.

Applicant was incorporated under the laws of the state of California on August 26, 1911, for the purpose of constructing approximately 2 miles of railroad from a point near San Pablo quarry to a connection with the Richmond Belt Line Railway Company, near Winehaven. All of the above-described route lies within the city limits of Richmond, Contra Costa county, which city, by ordinance No. 255, adopted March 25, 1912, has granted the railway company a fifty-year franchise for the construction of its line.

At the present time the company has laid about 1,000 feet of track, which is now used by San Francisco-Oakland Terminal Railways to carry passengers to the ferry of the Richmond & San Rafael Ferry & Transportation Company, and to take shipments of rock from the quarry bunkers.

Applicant states that it has acquired all of the necessary right of way for its line, excepting a small piece of land which may not be needed in case the Richmond Belt Line Railway makes certain changes in its right of way.

Up to May 1, 1915, the applicant states that the total cost of its line was the sum of $50,123.46. It has an authorized capitalization of $100,000, divided into 1,000 shares of the par value of $100 per share, of which 110 shares are now outstanding. It has issued no bonds, notes, or other evidence of indebtedness.

The purposes of the present issue are to repay Blake Brothers Company for advances in the sum of $18,403.07; to repay San Francisco Quarries Company for advances in the sum of $21,070.11; and to pay an obligation to its attorneys, McCutchen, Olney, & Willard, in the sum of $490. The balance of the proceeds the company intends to use in repaying advances made subsequent to May 1, 1915, and to provide for new construction.

At the hearing of this application Richmond Wharf & Dock Company appeared in intervention, its interest arising from the fact that the railway company has acquired two parcels of land belonging to the dock company under condemnation proceedings. An order in these proceedings was entered by the superior

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court of Contra Costa county on August 19, 1913, and the matter is now on appeal to the supreme court.

[1] The principal point raised by the interveners was that the railway company was not a public utility and that the Commission was, therefore, without jurisdiction. There is no merit in this contention.

Applicant states that it is the intention to issue the stock herein applied for to Blake Brothers Company, or to some individual member of the firm, and that it is their intention to hold this stock, and not to resell the same to the public. The advances heretofore made for the railway have been by Blake Brothers Company or the San Francisco Quarries Company, which is controlled by Blake Brothers Company.

It is estimated that for the present, traffic will consist chiefly of rock shipments from the quarries controlled by Blake Brothers Company. At the present time such rock as is shipped from these quarries by rail passes over the lines of the San Francisco-Oakland Terminal Railways, and shipments are accordingly limited by the freight franchises of this company.

Applicant asserts that the contemplated connection with the Belt line will give it outlet over both the Southern Pacific and the Atchison, Topeka, & Santa Fe railways. Applicant hopes that eventually new industries may be attracted to the section of the bay shore served by its lines, and additional business result therefrom.

The present output of the quarries which the line will serve is approximately 180,000 yards a year. Witness for the applicant stated that this output would probably be increased 50 per cent with adequate railway connections.

[2] At the hearing of the application of Castro Point Railway & Terminal Company for authority to enter into an agreement with Charles Van Damme for the use of a wharf (application No. 1738), Richmond Wharf & Dock Company again asked for permission to protest against the issue of stock applied for in the application herein. It was thereupon stipulated that Richmond Wharf & Dock Company should be given an opportunity to present such additional evidence as it had to offer in the form of a written statement, to which Castro Point Railway & Terminal Company would be given an opportunity to reply.

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This statement and the reply thereto have been filed. Briefly, the arguments presented by Richmond Wharf & Dock Company are:

1. That this stock should not be sold to the public, as it has no assets behind it;

2. That Castro Point Railway & Terminal Company is not proceeding in good faith;

3. That no need exists for the proposed line of the railway company;

4. That the amount of stock asked for would be insufficient to build said line;

5. That the road could never pay expenses;

6. That the San Pablo Quarry Company's business is adequately served by existing facilities; and

7. That the whole scheme of the Castro Point Railway & Terminal Company was launched for the purpose of acquiring certain property of Richmond Wharf & Dock Company.

In answer to this statement the railway company replies:

1. That it is not the intention to sell this stock to the public, and that Blake Brothers Company will consider the investment good by reason of added value to lands and in the increased facilities for quarry output;

2. That the railway company has already demonstrated its good faith by laying 1,000 feet of track and doing considerable cutting and filling;

3. That the proceeds from the present issue will be sufficient to build a line to the proposed extension of the belt line railway;

4. That the promoters have frankly stated that they do not expect immediate dividends upon this stock at present;

5. That at the present time the quarry company can only ship by rail over the lines of the San Francisco-Oakland Terminal Railways; and

6. That the condemnation of the property of Richmond Wharf & Dock Company was only an incident in connection with its larger plans.

After a consideration of the evidence submitted by the applicant and after due consideration of the points raised by the intervener, I am of the opinion that the application for issue of stock as herein requested should be granted. I believe, however,

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that Castro Point Railway & Terminal Company should first demonstrate that it will proceed with the construction of a serviceable line, and I shall accordingly make the issue of this stock dependent upon the completion of all or substantial units of the line which Castro Point Railway & Terminal Company proposes to build.

This will work no hardship upon the applicant if it proceeds with the construction of its railway in good faith, for the reasons that all of the advances for the railway are being made by Blake Brothers Company, or the San Francisco Quarries Company, which is controlled by Blake Brothers Company.

The railway enterprise is to be controlled by Blake Brothers Company, and when the advances have been sufficient to enable the railway to complete a substantial unit, this Commission will issue its supplemental order, so that the railway may then issue to Blake Brothers Company enough stock at par to cover such advances.

CALIFORNIA RAILROAD COMMISSION.

IN RE IMPERIAL GRAIN & WAREHOUSE COMPANY.

[Decision No. 2648; Application No. 1789.]

Security issues — Purpose — Rebuilding of warehouse destroyed by earthquake.

Securities should not be issued to provide funds to rebuild a warehouse destroyed by an earthquake, since this is not a capital purpose for which stock may ordinarily be issued under the terms of the California Public Utilities act.

[July 31, 1915.]

APPLICATION for permission to issue 75 shares of capital stock at the par value of $100 per share, proceeds to be used for the purpose of constructing a new warehouse and repairs to existing warehouses. Authority granted to issue 65 shares of stock to be sold at not less than par, proceeds to be used for enlarging existing warehouse and building new warehouse; denied so far as the proceeds from proposed issue were to be used from for repairs.

Appearances: Albert M. Norton for applicant.

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Loveland, Commissioner: This is an application of Imperial Grain & Warehouse Company for authority to issue 75 shares of its capital stock for the purpose of providing funds for additions and betterments, as hereinafter set forth.

At the present time applicant operates eight warehouses in the counties of Los Angeles, Imperial, and Riverside. All of its outstanding capital stock, amounting to 419 shares out of a total authorized issue of 1,000 shares, is owned by Newmark Grain Company. The latter company formerly owned certain of the warehouses now operated by applicant. It sold its interests to Imperial Grain & Warehouse Company under an order of this Commission dated July 13, 1914.

The purposes for which applicant proposes to issue this stock are the rebuilding of a warehouse at El Centro, destroyed by earthquake; enlarging of warehouse at Calipatria, and building of warehouse at Rockwood, all in Imperial county. The estimated cost of these improvements is $6,000. The balance of the proceeds from the sale of stock applicant intends to apply to other improvements not yet fully determined upon.

Witness for applicant stated that proper warehouse facilities in Imperial county have been lacking, and that there is considerable demand on the part of farmers for the construction of new warehouses. The company states that it already has stock subscriptions to the extent of approximately $1,400 from the farmers in the Calipatria district, and that it expects about an equal amount of subscriptions in the Rockwood district. The stock not sold to farmers will be taken by Newmark Grain Company.

Applicant's annual report to this Commission for the year ending December 31, 1914, shows that the company has no bonds or notes outstanding. Its net operating revenues for the same period amounted to $1,165.37 and since the report was rendered the company has declared a dividend of $2.75 on each share.

A summary of the company's balance sheet as of December 31, 1914, is as follows:

Assets:		
Property account	$41,893.24	
Due from Newmark Grain Company	1,172.11	
		$43,065.37
Liabilities:		
Capital stock	$41,900.00	
Undivided profits	1,165.37	
		$43,065.37

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Applicant represented that it will require approximately $1,000 to rebuild a warehouse at El Centro recently damaged by earthquake. As this is not a capital purpose for which stock ordinarily may be issued under the terms of the Public Utilities act, I recommend that this portion of the application be denied without prejudice. The applicant may issue a note for less than one year for this purpose, and at the end of the year's period may again bring this portion of the application to the attention of this Commission.

After a consideration of the evidence submitted by applicant I am of the opinion that the request is reasonable, and should be granted to the extent hereinbefore set forth.

Note.—Security issues authorized.

Security issues have also been authorized in the following cases:

Arizona.—In Re Verde Tunnel & Smelter R. Co. No. 278, September 3, 1915, $50,000 capital stock, proceeds to be used for construction and equipment; In Re Upper Verde Public Utilities Co. No. 277, Sept. 3, 1915, $70,000 capital stock to be disposed of at par, proceeds to be used for the construction of a water, electric, and sewer system.

California.—In Re San Francisco-Oakland Terminal R. Co. Application No. 1152, Decision No. 2663, Aug. 4, 1915, permission to pledge bonds of the value of $40,000 pending appeal in civil action; In Re San Francisco-Oakland Terminal R. Co. Application No. 1152, Decision No. 2662, Aug. 4, 1915, permission granted to pledge 18 of its $1,000 general lien bonds during pendency of appeal of civil action; In Re Sierra Madre Teleph. & Teleg. Co. Application No. 1778, Decision No. 2657, Aug. 3, 1915, permission granted to renew five promissory notes aggregating the sum of $8,000 by period of not exceeding two years, with interest at not to exceed 7 per cent; In Re Happy Valley Land & Water Co. Application No. 1814, Decision No. 2692, Aug. 14, 1915, $4,500 promissory note to refund outstanding notes.

Illinois.—In Re Western United Gas & Electric Co. No. 4005, July 29, 1915, $135,000 general mortgage 5 per cent bonds to be disposed of at not less than 85 per cent of their par value, proceeds to be used for construction purposes, all discounts, commissions, and expenses to be amortized during the life of the bonds; in Re Nashville Electric Light Co. No. 4033, July 29, 1915, first and refunding mortgage to the Union Trust & Savings Bank of East St. Louis, to secure first and refunding mortgage 6 per cent gold bonds of the sum of $50,000, $12,000 of which are authorized to be issued at once, to be disposed of at not less than 90 per cent of their par value, proceeds

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to be used for the construction, extension, and improvement of facilities, discounts, commissions, and expenses to be amortized out of income during the life of the bond; In Re Morrison Teleph. Co. No. 4069, Aug. 19, 1915, $30,000 common stock to be disposed of at par, and proceeds to be used for the construction, extension, improvement of, or addition to, its facilities; In Re Mt. Carmel Public Utility & Service Co. No. 3122, July 29, 1915, the company was authorized to issue $300,000 of its capital stock for the acquisition of the plant of the Mt. Carmel Gas & Electric Company sold on foreclosure, and to issue its 6 per cent note to the Western German Bank for $50,000 in payment for certain expenses incurred in connection with the reorganization, it being found that the plant charged with said indebtedness of $50,000 was of the fair value of $300,000; In Re Benton Southern R. Co. No. 4021, Aug. 9, 1915, $2,500 capital stock to be disposed of at not less than par, proceeds to be used for construction purposes; In Re Johnston City Southern R. Co. No. 4020, Aug. 5, 1915, $2,500 capital stock to be disposed of at not less than par, proceeds to be used for construction purposes; In Re Fredonia & R. R. Co. No. 4019, Aug. 5, 1915, $2,500 capital stock to be disposed of at par, proceeds to be used for construction purposes; In Re Herrin Northern R. Co. No. 4025, Aug. 5, 1915, $2,500 capital stock to be disposed of at not less than par, the proceeds to be used for construction purposes.

Indiana.—In Re Topeka Water Co. No. 1692, Aug. 11, 1915, $1,000 common stock to be sold at par, and $4,000 preferred 6 per cent cumulative stock to be sold at not less than 94 per cent of its par value, proceeds to be used to construct a water plant and system, and to pay the reasonable expenses of incorporation, attorneys' fees, and the expenses incurred in procuring a franchise, the surplus, if any, to be carried in the treasury of the company as an operating fund.

Maine.—In Re Bar Harbor & U. River Power Co. No. 59, Sept. 2, 1915, $23,000 first and refunding mortgage 5 per cent gold bonds to reimburse the company for 85 per cent of the actual cost of extensions, betterments, and permanent improvements paid for between July 1, 1914, and December 31, 1914.

Michigan.—In Re Cincinnati Northern R. Co. D-959, Sept. 10, 1915, $500,000 equipment trust certificates to be disposed of at not less than 94 per cent of their par value, proceeds to be used in payment for equipment; In Re Gratiot County Gas Co. D-793, Sept. 10, 1915, increase of capital stock from $30,000 to $40,000 and authority to issue $20,000 par value corporate bonds heretofore authorized. Capital stock to be sold at not less than par, and bonds at not less than 85 per cent of their par value, proceeds to be used in payment of construction of facilities; In Re Detroit, B. C. & W. R. Co. D-431, Aug. 24, 1915, $90,000 bonds of the issue of $1,250,-

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000 authorized October 18, 1912, to be sold at not less than 90 per cent of their par value, the proceeds to be used upon obligations incurred in construction of railway from the village of Sandusky to the village of Peck.

Nebraska.—In Re Amherst Independent Teleph. Co. No. 2493, Aug. 31, 1915, $200 additional stock for additions and betterments; In Re Chapman Teleph. Asso. Application No. 2485, Aug. 21, 1915, $30 capital stock, proceeds to be used for betterments. In Re Ulysses Independent Teleph. Co. No. 2483, Aug. 19, 1915, $250 stock to be sold at par, proceeds to be used for extensions and betterments.

Ohio.—In Re Cincinnati Northern R. Co. No. 590, Sept. 9, 1915, $500,000 equipment trust certificates to be disposed of at not less than 94 per cent of their par value, proceeds to be devoted to the payment of not more than 90 per cent of the total purchase price of certain equipment; In Re Xenia Water Co. No. 582, Sept. 10, 1915, $100,000 6 per cent cumulative preferred capital stock to be sold at not less than par, proceeds to be used for the construction of a pumping station, a filtration plant, and a force main; In Re Dayton Gas Co. No. 577, Sept. 7, 1915, $140,000 first mortgage 5 per cent bonds secured March 1, 1930, to be disposed of at not less than 92 per cent of their par value, proceeds to be used for the reimbursement of the company for 75 per cent of the sum of $192,346 expended for the construction of additions, extensions, and improvements to its plant and facilities; In Re Archbold & S. Gas Co. No. 521, Aug. 31, 1915, $30,000 capital stock to be disposed of at par, the proceeds to be used for the construction of a gas main; In Re Trumbull Public Service Co. No. 581, Aug. 31, 1915, $144,000 first mortgage 6 per cent gold bonds to be disposed of at not less than 92 per cent of their par value, proceeds to be used for reimbursement for 90 per cent of the sum of $160,207.02 expended from income from December 31, 1913, to July 1, 1915, for the construction of additions, extensions, and improvements to its plant and facilities; In Re Lake Erie & P. R. Co. No. 580, Aug. 25, 1915, $3,540,000 first mortgage 5 per cent bonds, the proceeds to be devoted to the acquisition of property and refunding of lawful obligations; In Re Cleveland & P. R. Co. No. 574, Aug. 26, 1915, $1,222,050 special guaranteed 4 per cent capital stock, proceeds to be used for the extension and improvement of applicant's facilities and for the maintenance of its service; In Re North Western Ohio Light Co. No. 530, Aug. 24, 1915, $400,000 capital stock and $400,000, 5 per cent first mortgage or first and refunding mortgage, forty year bonds, proceeds to be used as the purchase price on certain electric properties acquired; In Re Dayton Power & Light Co. No. 480, authority to pledge preferred capital stock to the amount of $120,000 as collateral security for loan to be not less than $75,000 pending the disposal of security issues of $300,000 authorized May 24, 1915; In Re Adena, C. & N.

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A. R. Co. No. 578, Aug. 23, 1915, $1,000 capital stock, proceeds to be devoted to the payment of the expenses of incorporation, to furnish a working capital to enable applicant to pursue its corporate purposes, by the acquisition of property, and the construction, completion, extension, and improvements of its facilities.

Pennsylvania.—In Re Form for Filing Certificates of Notification, July 6, 1915, the Commission adopted the following order: "That the form of certificate of notification, with the instructions pertaining thereto, embodied in printed form to be hereafter known as certificate of notification for trust certificates, bonds, notes, or other evidences of indebtedness, or other securities, a copy of which is now before the Commission, be and the same is hereby approved; and that a copy thereof duly authenticated by the secretary of the Commission be filed in its archives in the custody of the secretary, and a duplicate thereof in the office of the bureau accounts and statistics, and that each of said copies so authenticated and filed shall be deemed an original record thereof.

"It is further ordered that the said form of certificate of notification, with the instructions pertaining thereto, be and the same is hereby prescribed for use by public service companies, subject to the provisions of the Public Service Company law, approved July 26, 1913, in filing with this Commission certificates of notification on or prior to the date of issuance of any trust certificates, bonds, notes, or other evidences of indebtedness, or other securities, payable at periods of more than twelve months (not including stocks), and that each and every such public service company, its receiver, or other officer appointed by any court to have charge of the affairs of such public service company, be required to use and set forth the facts and information required in the said form, and to follow and obey the said instructions in filing certificates of notification on or prior to the date of issuance of any trust certificates, bonds, notes, or other evidences of indebtedness, or other securities, payable at periods of more than twelve months (not including stocks), according to the provisions of the Public Service Company law, approved July 26, 1913, and that copies of the said form be sent to each and every public service company upon request.

"It is further ordered that August 1, 1915, be and is hereby fixed as the date on which the said form and the said instructions shall become effective."

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DISTRICT OF COLUMBIA PUBLIC UTILITIES COMMISSION.

IN RE JURISDICTION OF THE COMMISSION OVER MOTOR-BUS LINES AND SIMILAR COMMON CARRIERS.

[Order No. 160; P.U.C. No. 1417–13.]

Automobiles — Common carriers — Defined routes — Jurisdiction of Commission.

Persons, firms, or corporations operating motor busses or motor vehicles along defined routes in the District of Columbia for hire or for the transportation of persons are engaged in the business of common carriers within the meaning of the Public Utilities law, and are therefore within the jurisdiction of the Commission.

[August 28, 1915.]

PROCEEDING to determine whether certain classes of motor vehicles are common carriers; ordered that operators of such vehicles should submit a statement of the number of vehicles operated, and the make, type, and seating capacity of each vehicle; a statement of the route or routes covered; and a copy of the schedule on which the busses are operated.

Brownlow, Commissioner: Under authority of the law and regulations relating to street traffic in the District of Columbia and of licenses duly issued by the Commissioners of the District of Columbia, certain persons, firms, and corporations have undertaken the operation of motor busses and other motor vehicles along certain defined routes in the District of Columbia for the transportation of persons for hire.

It now appears to the Commission that the motor-bus and motor-vehicle service has become established as an important means of transportation to the public.

The Public Utilities law defines the term "common carrier" as follows:

"The term 'common carrier,' when used in this section includes express companies and every corporation, street railroad corporation, company, association, joint-stock company or association, partnership, and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any agency or agencies for public use

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for the conveyance of persons or property within the District of Columbia for hire." [37 Stat. at L. 975, chap. 150.]

The Commission is of the opinion that this provision of law includes any person, firm, or corporation operating any public motor bus or motor vehicle for hire or for the transportation of passengers in the District of Columbia with sufficient regularity to enable the public to take passage therein at any point intermediate to the stable or stand of such vehicle, or operating such vehicle over a route sufficiently definite to enable the public to ascertain the streets and avenues on which such vehicles can be found *en route.*

In pursuance of this opinion and of all the facts developed, the Commission decides that the following named persons, firms, or corporations, operating motor busses or motor vehicles over defined routes in the District of Columbia are engaged in the business of common carriers within the meaning of the Public Utilities law, and are therefore within the jurisdiction of the Public Utilities Commission:

Arlington Barcroft Auto Company, Baltimore & Washington Boulevard Motor Company, Inc., Employees of Southern Railway Company at Potomac Yards, Va., Mrs. C. M. Singleton Jack, Jitney Bus Company, Inc., Thomas M. Nolan, Mrs. Agnes W. Maher, James M. Swain, Stein, Harris, & Dulcan, Virginia Auto Service Company, Inc., Selina M. Wright.

It is therefore *ordered:*

(1) That the above-named individuals and corporations, and such other individuals and corporations as now or may hereafter engage in the business of common carriers described above, shall comply with all the requirements of the Public Utilities law applicable to them.

(2) On or before the 10th day of September, 1915, the said persons shall submit the following reports:

(a) A statement of the number of vehicles operated and the make, type, and seating capacity of each vehicle so used.

(b) A statement of the route or routes covered in each case.

(c) A copy of the schedule on which the busses are operated.

(3) That the said individuals and corporations shall submit

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such other reports, special or periodic, as may now or hereafter be required by law or by the orders of the Public Utilities Commission.

GEORGIA RAILROAD COMMISSION.

IN RE ATLANTIC COAST LINE RAILROAD COMPANY.

[File No. 12331.]

Commerce — State regulation — Requiring local stop of interstate train.

An order of the Georgia Commission requiring a railroad company to stop an interstate train at a small town to accommodate an average of one and one-fourth passengers per day using such train would be an improper interference with interstate commerce, where reasonable adequate passenger facilities are afforded by three trains daily of another company, and the stopping of the train would tend to prevent its meeting the competition of a parallel railroad traversing a shorter distance between the same termini.

[August 5, 1915.]

PETITION of Atlantic Coast Line Railroad Company for authority to discontinue stopping its passenger train No. 82 at Ludowici, Georgia; granted.

By the Commission: Notwithstanding the protest of citizens of Ludowici, and of others, the Commission feels constrained, under the facts and the law governing in this case, to grant the prayer of petitioner.

Because of a quite general misunderstanding of the power and jurisdiction of the Commission over the operation of interstate trains prevailing in the public mind, the Commission avails itself of this opportunity to explain briefly the limitations upon its powers imposed by law.

The train in question is practically a through train operated between New York and Tampa. It makes connection with steamers at Tampa for Havana, and was primarily established for the carriage of through passengers, mail, and express. Its run is a long one, with numerous important connections.

Ludowici is a town of 600 or 700 population, and a junction point with the Georgia Coast & Piedmont Railroad.

About a year ago the Atlantic Coast Line, for the first time

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since the establishment of train No. 82, began stopping it at Ludowici in order to make connection with a passenger train then operated by the Georgia Coast & Piedmont. A few months since, this connection was broken by the discontinuance by the Georgia Coast & Piedmont, with the approval of the Commission, of its connecting train, so that Coast Line train No. 82 no longer has this connection to meet.

The Atlantic Coast Line Railroad is closely paralleled from Tampa to Richmond by the Seaboard Air Line Railway, and the two systems are keen competitors between New York and Tampa. The Seaboard is the short-line road, it being 26 miles shorter from Tampa to Jacksonville, 13 miles shorter from Jacksonville to Savannah, and 68 miles shorter from Tampa to Richmond. Coast Line train No. 82, leaving Tampa daily at 9 P. M., is opposed by Seaboard Air Line No. 2, leaving Tampa at the same hour, and because of its shorter mileage arriving at Jacksonville thirty minutes ahead of Coast Line 82, at Savannah thirty minutes, and at Richmond one hour and twenty minutes ahead.

Ludowici has the following north-bound passenger train service, to wit:

Atlantic Coast Line No. 58	.....	at	7:33	A.	M.
" " " " 22	.....	"	7:53	P.	M.
" " " " 80	.....	"	11:08	P.	M.

—all stopping regularly thereat.

From August 12 to August 23, 1915, inclusive, the following number of passengers boarded the above trains and No. 82 at Ludowici:

No. 58—59	passengers,	an	average	of	4.8	per	day.
No. 22—96	"	"	"	"	8.	"	"
No. 80— 4	"	"	"	"	½	"	"
No. 82—15	"	"	"	"	1¼	"	"

CONCLUSIONS.

In the opinion of the Commission a triple daily passenger service north bound from Ludowici is reasonably adequate for the traffic. The schedules as shown while not perfect, are reasonably convenient. The number of passengers using No. 82, an average of 1¼ per day, in our opinion is not sufficient to justify the compulsory stopping of No. 82, an interstate, heavy,

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through train, run in keen opposition to No. 2 of the Seaboard Air Line, between New York and Tampa, and having the shorter mileage.

In truth, under the facts as shown in this record, the Commission is of the opinion that it is without power to compel the stop at Ludowici.

The law in reference to the stoppage by state authorities of interstate trains, where local facilities are reasonably adequate for the traffic, is well settled. Only a few citations will be made from many adjudications.

In Chicago, B. & Q. R. Co. v. Railroad Commission, 237 U. S. page 226, 59 L. ed. —, P.U.R. 1915C, 309, 35 Sup. Ct. Rep. 560, the Supreme Court of the United States said: "In reviewing the decision we may start with certain principles as established: (1) It is competent for a state to require adequate local facilities, even to the stoppage of interstate trains or the rearrangement of their schedules. (2) Such facilities existing—that is, the local conditions being adequately met—the obligation of the railroad is performed, and the stoppage of interstate trains becomes an improper and illegal interference with interstate commerce. (3) And this, whether the interference be directly by the legislature or by its command through the orders of an administrative body."

In Atlantic Coast Line R. Co. v. Wharton, 207 U. S. page 328, 52 L. ed. 230, 28 Sup. Ct. Rep. 121, the same court said: 1. "Any exercise of state authority, whether made directly or through the instrumentality of a Commission, which directly regulates interstate commerce, is repugnant to the commerce clause of the Federal Constitution: and so held as to the stopping of interstate trains at stations within the state already adequately supplied with transportation facilities." 2. "Inability of fast interstate trains to make schedule, loss of patronage and compensation for carrying the mails, and the inability of such trains to pay expenses if additional stops are required, are all matters to be considered in determining whether adequate facilities have been furnished to the stations at which the company is ordered by state authorities to stop such trains."

In Mississippi R. Commission v. Illinois C. R. Co. 203 U. S. page 335, 51 L. ed. 209, 27 Sup. Ct. Rep. 90, the same court

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said: "While a State Railroad Commission may, in the absence of Congressional legislation, order a railroad company to stop interstate trains at stations where there is only an incidental interference with interstate commerce, based on a legal exercise of the police power of the state exerted to secure proper facilities for the citizens of the state, where the railroad has—as in this case—furnished all proper and reasonable facilities, such an order is an improper and illegal interference with interstate commerce, and void as a violation of the commerce clause of the Constitution."

"The transportation of passengers on interstate trains as rapidly as can with safety be done is the inexorable demand of the public who use such trains. Competition between great trunk lines is fierce and at times bitter. Each line must do its best even to obtain its fair share of the transportation between the states. . . . A wholly unnecessary, even though a small obstacle, ought not in fairness, to be placed in the way of an interstate road, which may thereby be unable to meet the competition of its rivals. We by no means intend to impair the strength of the previous decisions of this court on the subject, nor to assume that the interstate transportation, either of passengers or freight, is to be regarded as overshadowing the rights of residents of the state through which the railroad passes, to adequate railroad facilities. Both claims are to be considered, and after the wants of the residents within a state or locality through which the road passes have been adequately supplied, regard being had to all the facts bearing upon the subject, they ought not to be permitted to demand more, at the cost of the ability of the road to successfully compete with its rivals in the transportation of interstate passengers and freight."

The Commission while desirous of consulting, as far as within its power, the convenience of citizens at Ludowici, has not, under the facts in the record in this case, felt that it should pass an order violative of the legal rights of the railroad.

After the hearing in this case had been completed and parties dismissed, the Commission received telegrams from interested parties asking that the hearing be continued. As the hearing had been actually completed when these messages were received,

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compliance with the request was impossible. The Commission, however, gave consideration to these protests in executive session subsequently.

GEORGIA RAILROAD COMMISSION.

IN RE MACON RAILWAY & LIGHT COMPANY.

[File No. 10978.]

Apportionment — Expenses — Joint management — Separate departments of utility.

1. In ascertaining the earnings of one of the two departments of a utility which is one of four public service corporations owned by substantially the same interests, with substantially the same general organization conducting the four businesses jointly, with many expenses in common, the intercorporate relations must be taken into consideration, assigning to each company its direct revenues and expenses, apportioning between them the expenses common to all, and also apportioning the expense common to both departments.

Rates — Reasonableness — Dissatisfaction of patrons with increase — Depressed business conditions.

2. The reasonableness of rates cannot be entirely determined from earnings following an increase of rates, occasioning some degree of dissatisfaction among patrons, and under depressed business conditions.

Apportionment — Expenses — Joint management — Separate departments of utility.

3. In ascertaining the earnings of one of the two departments of a utility which is one of several public service corporations jointly managed with many expenses in common, the Georgia Commission apportioned the common expenses between the corporations upon the basis of the percentage of the gross earnings of each company to the total of all, and, using the sums apportioned to the particular utility, apportioned the expenses common to both departments in a similar manner.

Apportionment — Taxes — Separate departments of utility.

4. In ascertaining the earnings from the commercial and residential lighting and power business of a utility which also supplied the municipality with light and operated a street railway, the Georgia Commission apportioned the total tax charges upon the basis of the percentage of the book cost value of the electric light and power property, including the municipal system, to the total book cost value of all property, distributing the charge against the electric department between the commercial and residential lighting and retail power, and municipal lighting, upon a similar percentage basis.

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Return — Amount — Single department of utility.

5. A utility was denied authority to increase rates from one of its departments, where, if expenses were properly apportioned between the departments, and due allowance made for depreciation, net earnings would produce a return of 8.25 per cent of the value of the property used for such department.

Return — Operating expenses — Extraordinary expense.

6. An extraordinary expense which will not again be incurred by an electric utility in the dismantling of primary lines of the company supplying it with current and transferring the current distribution to the primary lines of the utility will not be considered in determining its earnings for rate-making purposes,—assuming it to be a proper charge to operating expenses.

Rates — Electric — Effect of excessive payment by utility for current.

7. The Commission in passing on a proposed rate increase by an electric utility will not accept as conclusive or binding on it the contract price paid for current furnished by another utility owned by substantially the same interests, particularly where the utility is the largest customer and is charged higher prices than other customers.

Evidence — Burden of proof — Application to increase rates.

8. The burden is upon a utility to show the unreasonableness and inadequacy of existing rates, in applying for authority to make an increase.

Rates — Separate departments of utility — Recoupment of losses.

9. Losses or lack of profits from the railway and municipal lighting departments of a utility cannot be recouped, under independent and separate rates, at the expense of light and power patrons.

[August 24, 1915.]

APPLICATION of the Macon Railway and Light Company for authority to increase its commercial and residential lighting rates and retail power rates, denied. The company was authorized to make a reasonable reinstallation charge.

Candler, Chairman: On February 24, 1914, upon application of the Macon Railway & Light Company for an increase in its then existing commercial and residential lighting rates and retail power rates, the Commission issued its order prescribing a new scale of rates for these branches of service, effective March 1, 1914, considerably in excess of the rates in effect at the date of the order.

In the opinion accompanying this order, the Commission said:

"The rates which we have prescribed will, we believe, earn fair returns, under wise and economical management, upon the fair value of the properties devoted to the public use. We

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believe the services to the public are reasonably worth the prices we have fixed. If at the expiration of one year under their operation, we find we are mistaken, we shall promptly undertake to revise them."

On June 9th last the light company filed with the Commission a petition in which it alleges that the rates prescribed by the Commission, as above mentioned, have proved grossly inadequate, and prays for a revision of the same and the establishment of a new schedule of increased rates as set forth in the petition.

The Commission has held two hearings on this petition, and has made a thorough and painstaking investigation of the business and earnings of the company under the rates complained of for fifteen months, beginning with the date they became effective, March 1, 1914, and ending May 31, 1915. Competent expert accountants, under the direction and supervision of the Commission, have made and submitted to the Commission detailed studies and reports as to the company's business, the expenses of conducting the same, and the earnings therefrom, during the above-mentioned period.

For the purposes of this petition, the company, while protesting that it was low, accepted the valuation placed by the Commission in the previous investigation upon the properties devoted to commercial and residential lighting and power uses, so that in the instant case there is no question of values. The present investigation involves only the ascertainment of the actual earnings of the company under the rates prescribed by the Commission, and whether they afford a reasonably adequate and fair return upon the values heretofore determined.

Apportionment of Common Expenses.

[1] Ascertainment of the true earnings of the company has been made difficult by reason of the fact that the lighting business of the company is conducted in connection with its railway business, and the municipal lighting service in Macon is under contract to another company, but actually performed by petitioner, and further by the fact that the Macon Railway & Light Company is one of four public service corporations owned by substantially the same interests, with substantially the same

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general organizations conducting the four businesses jointly, with many expenses in common.

These four corporations are: The Central Georgia Power Company, which generates and sells electric current to the Georgia Public Service Corporation and to the Macon Railway & Light Company; the Georgia Public Service Corporation, distributing and selling electric current which it buys from the Power Company; the Macon Gas Light Company, manufacturing and selling gas to the public; and the Macon Railway & Light Company, using the electric current purchased by it from the Power Company in operating its electric railway system, and in serving its light and power patrons. This company also owns the municipal lighting system.

The Central Georgia Power Company is under a term contract to light the city at prices much below the actual cost of the service. Owning no lighting or distribution system, the common owners of it and the Macon Railway & Light Company, which owns the system, require the Railway & Light Company to carry out the Power Company's contract with the city, charging it with the current used, but allowing it to retain the proceeds from the service.

The actual out-of-pocket loss placed upon the Railway & Light Company by the Power Company in fulfilment of the Power Company's contract is over $6,000 per annum, exclusive of interest on the investment, depreciation of and taxes on the property in use, and administrative expenses.

All four companies have practically the same general officers, many of the same general office clerks, the same general offices, and large general management expenses in common. It will be seen, therefore, that in ascertaining the true earnings of the Macon Railway & Light Company from its commercial and residential lighting and retail power business under the rates prescribed by the Commission, for the fifteen months ending May 31, 1915, the above-described intercorporate relations must be taken into consideration; direct revenues and expenses must be properly assigned to each company, and expenses common to all must be properly allocated as between the four companies. Only in this way can the true expenses of the petitioner, the Macon Railway & Light Company, be fairly ascertained.

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As the Railway & Light Company is engaged in two distinct public services, to wit, a railway transportation business, and a light and power business, a further allocation of expenses common to the two departments is necessary, in order that the correct earnings in the electric light and power department may be fairly ascertained.

In the 1914 inquiry, the Commission estimated the fair value of the property of the Railway & Light Company used in commercial and residential lighting and for retail power purposes to be $439,241. It was also of the opinion that the sum of $25,000 was reasonably required as working capital in performing these services, making the total capital upon which the company was entitled to a fair return, $464,241. This valuation excluded the property used in municipal lighting, estimated by the Commission as having a fair value of $80,973.

The gross revenue of the company from its commercial and residential lighting and from its retail power business, under the Commission's rates effective March 1, 1914, for the twelve months ending February 28, 1915, was $134,625.18. The total operating expenses, including taxes, charged on the books of the company against this gross revenue was $85,517.49, leaving net earnings of $49,107.69. From this net the company should have set aside for depreciation, under the opinion of the Commission, 4½ per cent of the value of the physical properties in use, to wit, $19,765.84. This does not appear to have been done. Had it been done, there would have remained as net earnings, over and above operating expenses, taxes, and depreciation, the sum of $29,341.85, equivalent to 6.32 per cent on the estimated value of the property and working capital.

[2] In considering the business of the company for the period mentioned, it should be borne in mind that the Commission rates in effect on March 1, 1914, were very much higher than the exceedingly low rates previously prevailing as the result of the bitter contest for existence waged between the Railway & Light Company and the Georgia Public Service Corporation. Such an increase, in numerous instances where long-term contracts had been made, based on the low rates, occasioned some degree of dissatisfaction among the company's patrons, and doubtless for a time affected business.

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Within six months of the promulgation of the Commission rates the European War commenced, followed by depressing effects on business of every character, throughout the world, and possibly nowhere in the United States more than in the cotton states. Conditions have not markedly improved as yet in this section.

Following an increase in rates under such depressed business conditions, it is not surprising that the business of this company, for the period under study, has fallen below normal. A return, however, of 6.32 per cent unquestionably compares favorably with returns for the same period in other lines of business in Macon and in Georgia.

These observations are submitted, not by way of asserting that 6.32 per cent is a fair and proper return, but rather as suggesting that the business of the company during the last eighteen months having been subnormal, results cannot and should not be taken as conclusive evidence as to the reasonableness of rates made effective and in operation under such conditions.

However, the Commission is firmly convinced that the true earnings under the rates in question during the first year of their operation were considerably in excess of the amount shown on the books of the company, to wit, $49,107.69, or $29,341.85 with the allowance of 4½ per cent for depreciation.

[3] The Commission has made a thorough analysis of the allocation of the expenses of the four companies heretofore mentioned common to all, and is satisfied that these allocations as made to the Railway & Light Company and the Georgia Public Service Corporation are excessive.

The major accounts, the distribution or allocations of which are particularly open to criticism, are "general officers' salaries," "general office clerks," "general office expense," and "expense,—general." Some items in these different accounts have been arbitrarily distributed; others on a basis of estimated actual services performed for each company, without to us any apparently satisfactory method of ascertaining how much of a general officer's time is actually devoted to each company.

The four companies, for example, have the same president; he uses the same office for all, with the same secretary or stenographer. The four companies have the same treasurer, with his

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office for the four, etc. The president's salary is charged, 20 per cent to the gas company, 40 per cent to the power company, 40 per cent to the Railway & Light Company, and nothing directly to the Georgia Public Service Corporation. Of the 40 per cent charged to the Railway & Light Company, 60 per cent is charged to the electric department and 40 per cent to the railway. All of the 60 per cent charged to the electric department remains against the commercial and residential light and retail power services, and nothing is charged to the municipal lighting service.

The treasurer's salary is charged 10 per cent to the Gas Company, 10 per cent to the Power Company, 22 per cent to the Georgia Public Service Company, and 58 per cent to the Railway & Light Company. Of the 58 per cent charged to the Railway & Light Company, 60 per cent is charged to the electric department and 40 per cent to the railway department. Of the 60 per cent charged to the electric department, no part is charged to the municipal lighting service.

The treasurer of the four companies is the chief accountant of each, and presumably keeps all accounts as also all moneys. The gross earnings of these companies for the year ending February 28, 1915, were:

Central Georgia Power Co.	$359,419	from	45	customers
Macon Gas Co.	146,937	"	3,991	"
Georgia Public Service Co.	74.114	"	959	"
Macon Ry. & Light Co.	440,947	"	2,840	"
Earned by the Railway Department				$306,322.00
Earned by the Light & Power Department				134.625.00
Municipal Lighting gross earnings were				16,270.00

In explanation of why further individual allocations than are shown on the books to the Georgia Public Service Corporation are not made, it was shown to the Commission that the Central Georgia Power Company made a charge to the Georgia Public Service Corporation for the year ending February 28, 1915, of $12,647.23 for "administrative expenses" and $1,809.05 for "general office expenses," with the statement that these amounts were arbitrarily fixed and collected, upon the theory that if the public service company was independently providing its own administration force and expenses, the cost would be higher.

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Two conditions, as we understand, subject those charges to disapproval, to wit:

1. The Central Georgia Power Company no more (probably not as nearly) furnishes this administrative force than does the Macon Railway & Light Company.

2. The actual charge is approximately twice as much as the service costs the Power Company, so that it appears to be actually making a profit of approximately 100 per cent on its administration of this orphan kinsman.

Other individual illustrations of the allocations of common expenses between the four companies need not be given. It is sufficient to say that, in our opinion, they are not made on any apparently rational or logical basis, but are largely arbitrary. We do not, in the remotest degree, question the good faith or honest intentions of the officials responsible for them. We are convinced that these officials thought, and probably still think, they were right and fair. Our judgment and opinions radically differ from theirs.

There are two logical plans for allocating common expenses between these four companies. One is upon the basis of the percentage of the gross earnings of each company to the total of the four; the other is upon the basis of the percentage of the direct expenses of each company to the total of the four. At the moment, the latter plan is not practicable for lack of full information, to secure which would require further accounting and time.

For present purposes, therefore, we have used the first plan of allocation as between the four companies, and then using the sums allocated to the Macon Railway & Light Company made a further allocation of the expenses common to the railway and the electric departments. The percentages used in the allocation between the four companies were as follows:

Central Georgia Power Co.	35.19%
Macon Gas Company	14.38%
Georgia Public Service Corporation	7.26%
Macon Ry. & Light Company	43.17%

The percentages used in allocating between the railway and electric departments of the Railway & Light Company were as follows:

Railway Department	69.46%
Electric Department	30.54%

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Another allocation could have been made between the commercial and residential lighting and power, and municipal lighting, but, except as to taxes, we have not included such in our revision.

Taxes.

[4] The total taxes assessed against the Railway & Light Company for the twelve months ending February 28, 1915, were $28,267; of which $9,239 were charged to commercial and residential light and retail power, and $2,066 to municipal lighting.

This distribution, we understand, was made by taking the total tax returns of the Railway & Light Company, $1,303,567, and assigning to the electric department the full valuations made by the Commission of the commercial and residential and retail power properties, $439,241, and of the municipal lighting system $80,973, in round figures $520,000, or approximately 40 per cent of the entire tax return, and upon this basis 40 per cent of the total taxes paid by the company were charged to the electric department.

We do not believe this a proper distribution.

The annual report of the company to the Commission for the year ending December 31, 1914, gives the total book cost values of the company's properties as $3,197,382, of which $979,402 is the book cost value of the Electric Light & Power properties, including the municipal light system, and $2.217,980 is reported as the book cost value of the railway properties, the percentage being 30.6 per cent for the electric properties and 69.4 per cent for the railway properties.

We know of no reason why the total tax charges of the company should not be distributed on this basis; for the sake of economy in figures, we have, therefore, distributed the total taxes 69 per cent to the railway and 31 per cent to the electric departments. The charges thus arrived at against the electric department we have further distributed, 85 per cent to the commercial and residential lighting and retail power, and 15 per cent to municipal lighting, these percentages being approximately those borne by each department to the total, according to the values previously fixed by the Commission.

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A fairly accurate analysis of the actual returns by the company to the comptroller general, allocating where the properties returned are not separately noted, shows slightly different percentages; that is, higher than as figured above for the railway and lower for the electric department.

[5, 6] Accepting the direct departmental charges as made on the company's books, and using the several percentages mentioned in the foregoing for allocating the expenses common to the four companies, and for further allocating common expenses as between the railway and the light and power departments, and still further between the commercial and residential light and power, and municipal lighting as to taxes, we find the correct operating expenses of the light and power service, excluding municipal, for the year ending February 28, 1915, were approximately $73,100, instead of $85,517, as shown by the books of the company, or net earnings of approximately $41,800, after allowing the depreciation reserve of $19,755, equal to approximately 9 per cent on the valuation and working capital fixed by the Commission. It is proper to note that prior to February, 1914, the company made its book allocations of common expenses between the railway and the light and power departments upon the basis of the percentage of earnings of each to the total earnings, and that the percentages thus used were approximately 60 per cent to the railway and 40 per cent to the electric department.

About February, 1914, while the 1914 application for increased rates was pending, and prior to the order of the Commission prescribing the increased rates effective March 1, 1914, the basis of allocation of common expenses between the two departments was changed, and during the year ending February 28, 1915, under the application of the new rates, these common expense accounts have been allocated on the books of the company as follows:

General officers' salaries, general office clerks, general office expense and expense general, 40 per cent to the railway and 60 per cent to the electric department,—just the reverse of the previous method.

Two items in "law expense account," to wit, salary and office rent of general counsel, which, with the exception of $73.37,

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constitute all of the account, have been since March 1, 1914, divided equally between the railway and electric departments. Prior to 1914 our understanding is they were allocated 85 per cent to railway and 15 per cent to electric.

Under account "injuries and damages" claim agent's salary during the year under consideration has been equally prorated between the two departments.

"Insurance account," with the exception of "indemnity" charged direct, has been prorated equally between the two departments.

"Store expense" and "stable expense" have also been allocated arbitarily, on a basis of 40 per cent to the railway and 60 per cent to the electric department.

In order that we might compare results had the same plan of allocation practised prior to the new 1914 rates been followed, we have taken all of those common accounts, and the tax account, for the year ending February 28, 1915, just as carried on the books of the Railway & Light Company after the official distribution between the four companies, and allocated between the railway and electric departments upon a basis of 60 per cent to railway and 40 per cent to the electric department, and by this method find the operating expenses and taxes properly chargeable to commercial and residential lighting and power service to be approximately $78,500, leaving after the 4½ per cent allowance for depreciation, net earnings for the year of $38,300, equivalent to 8.25 per cent on the values, including working capital fixed by the Commission.

During the year under consideration there were charged into operating expenses of the Railway & Light Company $3,444, of expenses connected with dismantling certain primary lines of the Georgia Public Service Corporation and transferring the current distribution to the primary lines of the Railway & Light Company. If a proper charge to operating expenses, this was an extraordinary expense which will not again be incurred, and this year's operating expenses will be saved that sum.

Again, under the "reconnection charge," which the Commission will authorize in the order which will be issued in connection with this opinion, new and additional revenue of $1,200 per annum will, it is estimated, accrue to the company.

[7] In 1914, in commenting upon the price paid the Power

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Company for current, approximately 1 cent per k.w.h., the Commission said: "In our opinion, the contract rate is rather full, and borders close to being unreasonably high."

The Commission further said: "It is not our purpose to rule on this question, but in passing we content ourselves with the observation that this Commission, in prescribing reasonable and just rates for light and power supplied to the public by the Macon Railway & Light Company, does not feel bound to accept the contract price paid for current by the Railway Company to the Power Company, as conclusive or binding on it."

The Macon Railway & Light Company is the largest customer the Power Company has, yet it is charged higher prices for electric current than some others among its customers.

The Commission has not modified its opinion as expressed in 1914 in reference to the price the Railway & Light Company is paying the Power Company for current.

[8] The Commission has not only made a thorough, but rather a sympathetic, investigation of the business of the petitioner under the rates alleged to be inadequate and unreasonably low. The burden of showing their unreasonableness and inadequacy was upon the petitioner. It has not convinced us of their unreasonableness, nor that we should at this time lay the burden of further increases in rates on the public.

[9] If the net revenues from the entire business of the company are insufficient to meet fixed charges and pay fair dividends, this deficiency cannot be justly provided by increasing rates in the one department which is earning reasonable returns. If the business of the railway department and of the municipal lighting service is conducted without profit or at a loss, such losses cannot be recouped, under independent and separate rates, at the expense of light and power patrons.

This principle has been well stated in a recent decision of the Massachusetts Gas & Electric Light Commission, in Re Lawrence Gas Co. P. U. R. 1915A, page 814, in the following language: "In a combined gas and electric business it is not easy to keep the respective plants and operations actually separated. The investment, to some extent at least, represents joint needs, and many of the general expenses are common to both departments, and must be arbitrarily apportioned. . . . It

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is important that the consumers of gas shall not be required to assume, in the price charged, any of the costs properly belonging to consumers of electricity. The latter have an equal and opposing right."

The petitioner having failed to convince us that its present scale of commercial and residential light rates and its retail power rates is not just and reasonable, the petition for increases in the same, at this time, upon the showing made, is denied. The order of the Commission to be issued in the case will authorize the company to make a reasonable reinstallation charge.

IDAHO PUBLIC UTILITIES COMMISSION.

TWIN FALLS COMMERCIAL CLUB

v.

GREAT SHOSHONE & TWIN FALLS WATER POWER COMPANY et al.

[Case No. F-88; Order No. 262.]

Rates — Reasonableness — Comparison.

1. In determining the reasonableness of a schedule of ferry rates, comparison with the rates charged by other ferry companies is of little or no value where the conditions and the circumstances under which they are operated are different.

Rates — Reasonableness — Factors to be considered in determining.

2. In determining the reasonableness of ferry rates, the fact that a large part of the patronage is due to the fact that liquor is sold in one county, and not sold in another, and that the entire state is soon to become dry, should not be taken into consideration, but the determination of the Commission should be based upon present operating conditions.

Depreciation — Ferries — Annual allowance.

3. An allowance of 5 per cent per annum for depreciation was held to be fair and reasonable for a small ferry.

Return — Unreasonableness — Percentage.

4. A return of 30 per cent on an investment of $3,100 is excessive.

Return — Reasonableness — Extra hazard.

5. A return of 10 per cent per annum on the total investment in a ferry was held to be a reasonable return for this class of public utility, and for insurance against operation at an extra hazardous point.

[August 5, 1915.]

P.U.R.1915E.

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COMPLAINT that the rates of a ferry company were excessive, unjust, unreasonable, and discriminatory; schedule modified so as to produce decreased revenue.

By the Commission: On the 25th day of June, 1915, the Twin Falls Commercial Club of Twin Falls, Idaho, filed a complaint against the Great Shoshone & Twin Falls Water Power Company and William T. Wallace, receiver of Great Shoshone & Twin Falls Water Power Company, wherein it alleged:

I. That the said power company for a number of years last past has been and is now operating a ferry across the Snake river at a point just east of Shoshone Falls and between the counties of Twin Falls and Lincoln in the state of Idaho, and has been and now is charging and collecting rates and fares for its ferry services according to the following schedule:

Stage, round trip	$1.00
Automobile and driver, one way	.50
Team and driver, one way	.50
Each additional passenger, one way	.25
Saddle horse and rider, one way	.25
Foot passenger, one way	.25
Sheep, one way, per head	½¢

II. That said rates and fares so charged and collected by the defendant company are excessive, unjust, and unreasonable in amount and discriminatory, as compared with similar charges for similar services on other ferries across the Snake river in the state of Idaho.

The complainant prayed that a hearing on said allegations be had by the Commission, and that the rates and fares to be charged by the defendant company for its said ferry service be fixed at such sum as the Commission may determine to be just and reasonable.

[1, 2] On the 9th day of July, 1915, a hearing on said complaint was had at Twin Falls, Idaho, before the full Commission. Owners of two other ferries across the Snake river were called to testify as to the reasonableness of the rates charged by the defendant company, but the conditions surrounding these ferries and the circumstances under which they are being operated were so different from those of defendant company's ferry that this testimony was of little or no value to the Commission. Defendant company attempted to show that a

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large part of the patronage of their ferry during the past two years was occasioned by the fact that Twin Falls county has been dry territory during that period and Lincoln county wet territory, and that this patronage will be lost when the entire state of Idaho becomes dry territory on January 1, 1916. This may prove to be true, but the Commission does not think this should be taken into consideration in determining the reasonableness of the present rates and fares.

Improvements are now being made on the state highway adjacent to this ferry and on the grades leading to it, which may have the effect of increasing its patronage. If sufficient patronage is not secured at any time in the future to pay a fair return on the value of the property used and useful in the public service, a readjustment of the rates and fares may be had at any time upon a proper showing before this Commission.

The Commission has before it the report of its auditor, who made an examination of the books of the defendant company to determine the operating revenues and operating expenses of the ferry property of the defendant company, and our decision and order in this case is based upon this report.

[3] The tables compiled by our auditor for the years 1910 to 1914 inclusive show the net operating income varying from $305.08 in 1911 to $1,809.60 in 1914. After making an allowance of 5 per cent per annum for depreciation, which we consider is a fair and reasonable amount for that item, the report shows net revenue for the period of five years covered by our auditor's report of $5,080.27.

[4] Taking defendant company's figures as to the value of the property used and useful in this ferry service, to wit, $3,100.80, we see that the return on the investment is over 30 per cent. This we find to be excessive.

[5] The defendant company asserts that this ferry is located at a hazardous point above Shoshone Falls, and that this fact should be taken into account in determining the reasonableness of the rates charged. The Commission has considered this extra hazard, but believes that the rates and fares permitted under this decision and order will produce sufficient revenue and provide a return of 10 per cent per annum on the total investment (and this the Commission finds is a reasonable return for this class

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of public utility), and in addition thereto a sum sufficient to provide insurance against the extra hazard.

We were not able to secure a statement showing the revenues from each class of service covered by the schedule of rates hereinbefore set out, and hence cannot determine accurately the effect of the reduction in rates as hereinafter ordered, but we believe that the defendant company should be required to eliminate from its present schedule the charge for each additional passenger, as provided in item No. 4 of said schedule, and report to this Commission at the end of sixty days from and after the effective date of this decision and order, the effect of such elimination on the operating revenues for said period of sixty days.

It is, therefore, *ordered* that from and after the 10th day of August, 1915, the said Great Shoshone & Twin Falls Water Power Company, and William T. Wallace, receiver of the Great Shoshone & Twin Falls Water Power Company put into effect and charge and collect rates and fares on their ferry across the Snake river just east of Shoshone Falls between Twin Falls and Lincoln counties in the state of Idaho until further order of this Commission in the premises, as follows:

Stage, round trip, including driver and passengers	$1.00
Automobile, one way, including driver and passengers	.50
Team, one way, including driver and passengers	.50
Saddle horse and rider, one way	25
Foot passenger, one way	.25
Sheep, one way, per head	½¢

And that said defendant company and its receiver report to this Commission the effect upon the operating revenues of said defendant company of said schedule of rates, for a period of sixty days from and after the 10th day of August, 1915.

ILLINOIS PUBLIC UTILITIES COMMISSION.

IN RE CHESTERFIELD TELEPHONE & TELEGRAPH COMPANY.

[No 3,682.]

Discrimination — Rates — Telephones — Subscribers at different distances from exchange.

A rate of $12 per year to subscribers of a telephone company, which owned the poles supporting the service wires owned by rural sub-

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scribers, plus a charge of $1 per year to rural subscribers located at different distances from the exchange, was held discriminatory, and the company was permitted to substitute a plus charge of 5 cents per year for each pole between the exchange and the subscriber's premises.

[August 19, 1915.]

APPLICATION by the Chesterfield Telephone & Telegraph Company for authority to change rates in order to eliminate discrimination between subscribers located at different distances from the exchange; granted.

The appearances are set out in the opinion.

By the **Commission**: The application in this case sets forth that the petitioner is a public utility engaged in the management and operation of a telephone system, with its principal place of business at Chesterfield, Macoupin county, Illinois; that it owns and operates a telephone exchange at Rockbridge, Illinois, and seeks authority to change certain of its rates at said Rockbridge exchange in order to eliminate certain discriminations.

The present rates applicable to its subscribers at said point are as follows:

Party line telephones, $1 per month; individual line telephones, $1 per month, plus an additional charge of $1 per year.

A hearing was held before the Commission in this case on May 18, 1914. W. J. Finch, president of the telephone company, appeared on behalf of the petitioner. No one appeared objecting.

From the testimony presented in this case it appears that the petitioner is now furnishing telephone service to its village subscribers at Rockbridge, and also to its rural subscribers connected with said exchange, at a rate of $1 per month. It also appears that there are three rural subscribers on individual lines connected with petitioner's exchange. One of said subscribers is located about 1 mile (twenty-one poles); one about 1¼ miles (forty-nine poles); and the other about 2¼ miles (fifty-five poles) from the Rockbridge exchange.

The wire connecting each of said subscribers to said exchange is owned by the subscribers, but the petitioner owns and maintains the poles on which said wires are strung, and also maintains the wires. In addition to a rate of $1 per month, each of said three subscribers are charged $1 per year.

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The petitioner contends that the above charge to the latter subscribers is not compensatory, and that it is discriminatory in that the subscribers are located at various distances from the exchange, and that they enjoy a service which cannot be extended to other subscribers on the same basis.

The petitioner seeks authority to discontinue the present charge to the three rural subscribers in question, and to make a rate applicable to all present or future individual rural subscribers to be open to all subscribers of $1 per month plus a yearly charge of 5 cents per pole contact, based on the number of poles between petitioner's exchange and the telephone of each of such subscribers. On this basis the present individual rural subscribers would each pay a rate of $12 per year plus $1.05, $2.45 and $2.75, respectively, or a total charge of $13.05, $14.45 and $14.75 per year, respectively.

The Commission is of the opinion, from a careful consideration of this case, that the present charge to the three individual rural subscribers in question is discriminatory for the reason that individual line rural service at the rate enjoyed by the three subscribers above mentioned is not open to the other subscribers of the petitioner, and it is quite apparent that such service could not be extended generally to all subscribers alike at the rate now in force, without it becoming unduly burdensome to the company. We are not prepared to lend our approval to the basis or plan proposed by the petitioner. However, under the peculiar facts in this case, the change proposed appears to be an equitable solution of the question presented, and as to this particular case it should be approved.

It is therefore ordered that the petitioner, the Chesterfield Telephone & Telegraph Company, shall discontinue its present schedule of rates at its Rockbridge exchange, and shall substitute therefor the following rates:

Party line telephones, $1 per month; individual line telephones, where the wire is owned by the subscriber, but the poles are owned and the poles and wires are maintained by the telephone company, $1 per month, plus a charge of 5 cents per year per pole between the telephone exchange and the subscriber's premises.

The above change in rates shall be filed, posted, and published

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as provided by law, and shall become effective from and after September 1, 1915.

By order of the Commission this 19th day of August, 1915. Dated at Springfield, Illinois.

ILLINOIS PUBLIC UTILITIES COMMISSION.

IN RE FOREST CITY TELEPHONE COMPANY.

[No 3604.]

Discrimination — Telephones — Business and residence rates.

1. The Illinois Commission Conference Ruling No. 13, which provides that "the classification of telephone subscribers into business and residence subscribers, with higher rates for the former than for the latter, is reasonable and permissible," is not a ruling that it is discriminatory and unlawful to charge the same rate for business telephones as for residence telephones

Discrimination — Telephone rates — Subscribers owning telephones.

2. It is discriminatory and unlawful under the Illinois Commission Conference Ruling No. 15 to grant any reduction from the regular rate to telephone subscribers owning their own telephones; but under conditions fixed by the Commission a telephone company may rent an instrument from a subscriber who owns the same.

Service — Payment — Flat discount rates.

3. A discount of 25 cents per month for prompt payment of bills for telephone service was approved by the Illinois Commission rather than a discount on the percentage basis, although the latter is regarded as more equitable.

[August 19, 1915.]

APPLICATION for authority to increase telephone rates; granted, it appearing that a reasonable increase should be allowed to meet increased cost of operation to provide for depreciation and a reasonable return upon the investment and to eliminate discrimination in favor of persons owning their own telephones.

The appearances are set out in the opinion.

By the **Commission**: The petitioner in this case is a public utility engaged in the management and operation of telephone exchanges at Forest City and San José. Application sets forth

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that the rates of the petitioner now in force and effect are as follows:

Forest City Exchange.

Business telephones	$12.00	per	year
Business telephones—subscriber owning the telephone	6.00	"	"
Residence telephones	12.00	"	"
Residence telephones—subscriber owning the telephone	5.00	"	"
Rural party line telephones	12.00	"	"
Switching rural telephones—party lines—subscribers owning and maintaining line to village limits	4.00	"	"
Switching rural telephones—individual lines—subscriber owning and maintaining line to village limits	5.00	"	"

San José Exchange.

Business telephones	$12.00	per	year
Business telephones—subscriber owning the telephone	6.00	"	"
Residence telephones	12.00	"	"
Residence telephones—subscriber owning the telephone	6.00	"	"
Rural telephones—individual line business service	24.00	"	"
Rural party line telephones	12.00	"	"
Rural party line business telephones	12.00	"	"
Rural party line telephones—subscriber owning the telephone	6.00	"	"
Switching rural telephones—party lines—subscribers owning and maintaining lines	6.00	"	"

Application further sets forth that it is discriminatory and unlawful to allow subscribers who own their telephones a lower rate than the rate charged subscribers whose telephones are furnished by the company; that it is discriminatory not to charge a higher rate for business telephones than for residence telephones; that it is necessary, in order to secure the prompt payment of rental charges, to allow a discount of 25 cents per month, or $3 per year, if rental charges are paid monthly in advance; and that the present rates do not produce sufficient revenue to place the utility on a sound financial basis and enable it to pay its employees full and fair compensation for their services, and to pay all of its operating expenses, provide an adequate depreciation fund, and pay to its stockholders a fair return on the investment.

Application is made for authority to discontinue the discriminatory rates that apply to subscribers who own their telephones, to establish a rate of $21 per year for business telephones, and to increase all other rates, with the exception of the rates for switching rural service subscribers, nominally 25 cents per month, and allow a discount of that amount on all bills paid monthly on or before the 15th day of the current month in which the service is rendered.

Hearing was held at Springfield, Illinois, May 19, 1915, due

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notice of the date of hearing having been given, as provided by law, to the mayor of each of the cities in which petitioner operates. Ben B. Boynton, attorney, appeared for the petitioner. No one appeared objecting.

From the testimony presented at the hearing, it appeared that the utility had on May 1, 1915, about 456 telephones in service, 183 of which are connected with the Forest City exchange and 273 with the San José exchange; that the greater part of the development at both exchanges is rural; that about half of the subscribers in the village of Forest City and a few subscribers in the village of San José own their telephones; also that a few rural subscribers connected with each exchange own their telephones, and that a reduction of 50 per cent from the regular schedule rate for the class of service furnished applies to such subscribers.

It further appeared that the utility is facing certain increases in expenses by reason of the employment of an additional operator at San José, increases in operators' salaries and manager's salary, and increased taxes, and that the present rates do not produce sufficient revenue to meet the requirements of the utility.

The petitioner submitted at the hearing a statement of assets and liabilities and earnings and expenses of the utility for the year ending December 31, 1914. According to this statement, the capital stock of the company is $20,000, $11,300 of which is outstanding, and the value of the physical property is estimated at $15,000. It appears that the earnings for the year ending December 31, 1914, amounted to $4,661 and that for the same period expenses amounted to $3,299, leaving a net revenue of $1,361. No allowance was made for depreciation, and the allowance for manager's salary was only $10 per month.

It further appeared that the utility has experienced considerable difficulty in making collections, particularly at San José and that on May 1, 1915, about $2,000 in rental and toll charges were outstanding. It was admitted that the petitioner had been negligent in the matter of collections, but it also appeared that subscribers were slow in making payments, particularly rural subscribers.

[1] The statement in the petition with reference to the rate for business telephones apparently is due to a misunderstanding

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of the ruling of the Commission regarding the classification of telephone subscribers. The Commission has not ruled that it is discriminatory and unlawful to charge the same rates for business telephones as for residence telephones. Paragraph "d" of Conference Ruling No. 13 reads:

"The classification of telephone subscribers into business and residence subscribers with higher rates for the former than for the latter is reasonable and permissible (1) because of the greater cost of providing business service, and (2) because it is a well-established principle that a lower residence rate is necessary in order that a sufficiently large number of subscribers may be secured to make the telephone valuable to all users."

[2] The rate that now applies to subscribers who own their telephones is, of course, discriminatory and unlawful. The Commission has ruled (Conference Ruling No. 16) that it is unlawful to grant any reduction from the regular rate on account of the subscriber owning the telephone. The above mentioned conference ruling also fixes the terms under which a telephone company may rent a telephone from a subscriber who owns the same.

The proposed rate of $21 for business telephones, with a discount of 25 cents per month if paid monthly in advance, appears to be a reasonable rate. Fourteen subscribers of the Forest City exchange and twenty-eight subscribers of the San José exchange will be affected by this increase, and the net increase in revenue, provided all subscribers take advantage of the discount feature, will amount to $252 per year. The increase in revenue that will result from the change in rates that apply to subscribers who own their telephones will amount to $399 per year, making the total increase in revenue $651 per year, which is approximately the amount of the increased expenses that are to be met by the utility.

[3] A discount to apply on bills paid on or before the 15th of the current month appears to be good telephone practice, as it tends to diminish collection expense and losses from unpaid rentals, and in this case a discount of 25 cents per month appears to be reasonable. While a discount applied on a percentage basis is regarded as being more equitable, in the present instance a flat discount rate appears to be justified.

The Commission is of the opinion that if proper service is furnished, the proposed rates will not be unreasonable; and while

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there is nothing in the record in this case with regard to service, however, the company is under the general obligation to comply with the rules established by the Commission governing telephone service.

It is therefore ordered that the petitioner, Forest City Telephone Company, be, and the same is, hereby authorized to discontinue the rate schedules that it now has in force and effect at Forest City and San José, and substitute therefor the following schedules:

Forest City Exchange

Business telephones	$21.00	per year
Residence telephones	15.00	" "
Rural party line telephones	15.00	" "
Switching charge for rural service subscribers	4.00	" "

A discount of 25 cents per month will apply to the above rates, with the exception of the rate for switching rural service subscribers, if rental charges are paid monthly on or before the 15th day of the current month in which the service is rendered.

All switching service charges are payable annually, in advance, and no switching service charge for any one line shall amount, in the aggregate, to less than $12 per year.

San José Exchange.

Business telephones	$21.00	per year
Residence telephones	15.00	" "
Rural individual line telephones—business service	27.00	" "
Rural party line telephones—business service	21.00	" "
Rural party line telephones	15.00	" "
Switching rural service subscribers	6.00	" "

A discount of 25 cents per month will apply to the above rates, with the exception of the rate for switching rural service subscribers, if rental charges are paid monthly on or before the 15th day of the current month in which the service is rendered.

All switching service charges are payable annually, in advance, and no switching service charge for any one line shall amount, in the aggregate, to less than $12 per year

It is further ordered that the schedules herein authorized shall become effective as of September 1, 1915, and shall be filed, posted, and published by said petitioner as provided by § 34 of an act to provide for the regulation of public utilities.

By order of the Commission, this 19th day of August, 1915, dated at Springfield, Illinois.

P.U.R.1915E.

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ILLINOIS PUBLIC UTILITIES COMMISSION.

IN RE CENTRAL ILLINOIS PUBLIC SERVICE COMPANY.

[No. 4107.]

Rates — Water — Substitution of meter for flat rates.

1. A water company may substitute a meter rate, based upon the cost of service, for a flat rate for water supplied to its consumers, when it appears that an inadequate supply will be thus augmented and that such method of charge is for the best interests of the consumer and the public.

Rates — Water — Condition imposed in authorizing meter rates.

2. A water company, on being permitted to change its charge for water supplied from a flat rate to a meter rate, was authorized to change the rates on file with the Commission on condition that no consumer should be required to pay a larger bill than would be due for a greater consumption.

[August 19, 1915.]

APPLICATION for authority to withdraw flat rates for water service and to substitute meter service; granted.

Commissioner **Shaw**: The petitioner herein, the Central Illinois Public Service Company, a corporation organized under the laws of the state of Illinois, has filed an application for authority to withdraw the flat rates now in force in the city of Harrisburg, and to charge for all water supplied to its consumers in that city at the meter rates.

[1] In an earlier case, the city of Harrisburg filed a complaint with the Commission on March 8, 1914, in regard to the service given by the Central Illinois Public Service Company. At hearings held in Springfield, on April 20, 1914, and in Harrisburg on May 23, 1914, two most important facts brought out,—(1) that the water supplied to the consumers was unfiltered and impure, and (2) that the supply did not equal the demand during the dry season. On June 23, 1914, the Commission entered an order directing the Central Illinois Public Service Company to construct a filter adequate to maintain pure its public supply. This filter has been constructed, and through its operation the city is supplied with pure water. The above order contained no reference or direction concerning the adequacy of supply. From the petition now before the Commission, it appears that the util-

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ity has attempted to solve the question of adequacy of supply by metering its consumers, and, at the present time, practically all the water services are metered.

Any basis of charging for water to be just for both the utility and the consumer must be predicated on the cost of the service. A flat rate, such as is now in effect in Harrisburg, based on the number and kind of fixtures installed, is an attempt to charge a consumer for what he would reasonably use through each fixture, and therefore an attempt to distribute the cost of service among the consumers according to the amount of water consumed. The number of fixtures ceases to be an index to the amount of water consumed when the consumer uses an excessive amount or is wasteful of water. Where waste exists the object of a flat rate is defeated. The fact that a flat rate leads to waste is sufficient to condemn it as a basis for charge in Harrisburg, where conservation of supply is a matter of vital importance. Cities similarly situated have made a material reduction in the *per capita* consumption by metering all service pipes. The Commission believes that the only way the cost of service can be divided equitably between consumers is with reference to the actual amount of water consumed.

It appears that the application of the petitioner is reasonable, and that it is to the best interests of the utility and its consumers that the authority be given to withdraw the flat rates.

It is therefore ordered that the schedule of flat rates and charges for water now in force in the city of Harrisburg be withdrawn.

No valuation having been made, the Commission is not rendering a decision on the reasonableness of the meter rates now in force and on file with this Commission.

[2] It is further ordered that the meter rates and charges of said Central Illinois Public Service Company in force in the city of Harrisburg and on file with this Commission shall be hereafter observed and in force, provided that no consumer will be required to pay a larger bill than would be due for a greater consumption.

By order of the Commission, at Springfield, Illinois, this 19th day of August, 1915.

P.U.R.1915E.

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ILLINOIS PUBLIC UTILITIES COMMISSION.

WAYNE COUNTY MUTUAL TELEPHONE COMPANY et al.

v.

COMMERCIAL TELEPHONE & TELEGRAPH COMPANY.

[No. 3514.]

Monopoly and competition — Application to enter occupied territory — Policy of Commission.

1. The proper remedy to secure adequate service in a territory occupied by a public service corporation is not the granting of a certificate of convenience and necessity authorizing another company to enter the field, where no steps have been taken to invoke the power of the Commission for the correction of such inadequate service, since this would result in a duplication of facilities, a divided service, and its attending evils; but in such a case the Illinois Commission will order the company already in the field to furnish proper service, and will withhold its decision on the application for the certificate for the purpose of making such further order as developments may warrant.

Service — Telephones — Physical connection pending application for certificate of convenience and necessity.

2. Physical connection between the lines of two telephone companies was ordered as a temporary arrangement pending an application for a certificate of convenience and necessity to authorize one company to establish a competing service in territory occupied by the other, where it appeared that intercommunication between the subscribers of the two companies was essential to the users of both.

[August 25, 1915.]

APPLICATION for a certificate of convenience and necessity for the establishment of a competing telephone system in the city of Fairfield on the ground of inadequate facilities and service of the defendant; decision reserved pending compliance with order requiring improvements; twenty days established as a reasonable time for such compliance.

The appearances are set out in the opinion.

By the **Commission**: The petition in this case represents that the defendant, Commercial Telephone & Telegraph Company, a corporation, with its principal place of business at Olney, Illinois, owns and operates a telephone system in the city of Fairfield; that such system consists of an antiquated property and is in a bad state of repair; that the equipment is obsolete and the property inadequate; that the defendant does not maintain

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the telephone service in a manner justly and reasonably due the patrons of said system; that the patrons of the defendant renting telephone instruments in the city of Fairfield pay the defendant the sum of $1.50 per month for telephone instruments installed in offices and business houses, and the sum of $1 per month for telephone instruments installed in dwelling houses; that patrons renting such telephones are required to pay toll charges to all near-by towns and villages in the county; that persons in the said near-by towns and villages are required to pay toll charges for telephone communication with patrons of the defendant in the city of Fairfield; that patrons of the defendant in the city of Fairfield have communication with very few rural telephones in the immediate vicinity of Fairfield; that the charges demanded by the defendant to points and places outside of the city of Fairfield are, in many instances, made in excess of the toll charges from such outside points and places to Fairfield; that the defendant is, and has been for some years past, charging the complainants and other patrons of the service unjust and unreasonable rates for the use of its instruments in offices, business houses, and residences, etc.; that the said charges are unwarranted, considering the unsatisfactory and generally inefficient service received by said patrons.

The petition further sets forth that prior to the defendant assuming control and management of the telephone system in the city of Fairfield, the complainants and other patrons of the service were provided communication with some three or four hundred rural telephones in the immediate vicinity of Fairfield; that under the present management they have communication with only some fifty rural telephones in the vicinity of Fairfield; and that on account of the "inept service and accommodations" on the part of the defendant, the said rural patrons have disconnected their telephones from the defendant's system.

The petition further sets forth that the complainant, the Wayne County Mutual Telephone Company, should be granted a certificate of convenience and necessity to install and operate within the city of Fairfield, a proper and efficient telephone service; that by the installation of another telephone system the complainants and other patrons of the defendant can be provided with proper and satisfactory service and connection with said

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rural telephones in the vicinity of Fairfield; that convenient, necessary, and satisfactory telephone service can be had with numerous rural exchanges, affording the citizens and business men of the city of Fairfield connection with several hundred rural telephones in the country, and with numerous towns and villages in the county and surrounding counties, without the payment of toll charges; that by the construction of another telephone system in the city of Fairfield, the complainants and the public will be afforded much better and more extensive accommodations and at much less charge and expense than is now possible.

The defendant, Commercial Telephone & Telegraph Company, hereinafter referred to as the "commercial company," did not file an answer to the complaint, but filed a motion to dismiss, alleging (1) that the complaint does not show that the Wayne County Mutual Telephone Company and the Business Men's Commercial Club are corporations duly organized and authorized to do business under the laws of the state of Illinois, and by reason thereof there are no proper parties as petitioners or complainants in said cause, and no natural or artificial persons as such complainants against whom, or in favor of whom, a lawful order could be entered by the Commission; (2) that said complaint does not show that any person or corporation who is a patron of the defendant has made any complaint as to the character or kind of services rendered by the defendant; (3) that said complaint does not show that the defendant cannot render reasonably good telephone service to its patrons and the citizens of Fairfield; (4) that said complaint requests a certificate of convenience and necessity for the establishment of a telephone exchange in the city of Fairfield, but no natural person or duly authorized corporation is requesting such certificate, or is named as the person to whom such certificate should be issued.

Subsequently a motion of A. J. Poorman et al., to be made parties complainant to the petition in this cause, was filed. After hearing arguments on both of the above motions, the Commission reserved its ruling thereon until final consideration of the case.

Hearing was held at Springfield, Illinois, May 18, 1915. Virgil W. Mills, of Mills & Forth, and John L. Cooper, attorneys,

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appeared for the complainants; John Lynch, attorney, appeared for the defendant.

From the testimony presented in this case, it appears that the Commercial Telephone & Telegraph Company, which operates an extensive telephone system in southeastern Illinois, with its principal place of business at Olney, operates a telephone exchange in the city of Fairfield, the county seat of Wayne county, serving about 250 subscribers, and has toll lines extending from Fairfield to a number of points in Wayne county, to Albion in Edwards county, and to Flora in Clay county, at which point connection is made with the toll-line systems of the commercial company and the Central Union (Bell) Telephone Company.

It further appears from the testimony that by reason of inadequate and unsatisfactory service furnished by the defendant, certain rural subscribers served on a switching service basis found it necessary to discontinue their connections with the defendant and install a switch board near the corporate limits of the city of Fairfield, and extend two lines into the city, one of which terminates in a livery stable and the other in a doctor's office; that such rural subscribers are a part of a so-called mutual or co-operative organization known as the Wayne County Mutual Telephone Company; that this latter company, hereinafter referred to as the "mutual company," through the co-operation of the Business Men's Commercial Club, of Fairfield, and many responsible citizens, proposes to install and operate a telephone exchange in the city of Fairfield, such exchange to be operated on a so-called mutual or co-operative plan; and that said mutual company proposes to extend the service to many points in Wayne county and to adjoining counties through certain reciprocal arrangements with other so-called mutual telephone companies.

The proposed construction of a competing telephone exchange in the city of Fairfield appears from the evidence to be the result of a state of great dissatisfaction with the service of the defendant company. The statements of various subscribers and former subscribers of the defendant, describing the reasons for this dissatisfaction, cover many pages of testimony.

It was clearly shown by the testimony that the local exchange plant of the defendant is in very poor condition, and that many interruptions to the service occur because of the badly deteri-

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orated condition of the outside distribution system and the obsolete substation equipment that is in use. It appeared that the switch board and other central office equipment is in good condition, but that the operating is not maintained at a high standard of efficiency. Poor operating, coupled with the physical trouble that occurs by reason of the badly deteriorated condition of the plant, has resulted in very unsatisfactory service.

The defendant company introduced some evidence tending to show that "trouble" is cleared promptly, and that the dissatisfaction with the service had not resulted in any decrease in traffic. On the contrary, it appeared that the number of calls per subscriber in the city of Fairfield is considerably in excess of the average number of calls per subscriber for exchanges of similar size and character. It was admitted, however, by witnesses for the defendant, that the outside exchange plant is in poor condition. Said witnesses further testified that agitation in the city of Fairfield for the installation of a second telephone system, and the action taken by the mutual company, had tended to discourage any further investment by the defendant in Fairfield.

The inadequacy of the service, it appears, is due largely to the inability of the subscribers of the defendant to communicate with the rural subscribers, that is, the subscribers of the mutual company, and the inability of the rural subscribers to communicate with the subscribers of the defendant. This condition, of course, is the result of the rural subscribers discontinuing connection with the exchange of the defendant, and no doubt has resulted in great inconvenience to all users of telephone service in the city of Fairfield and the rural territory contiguous thereto.

As stated above, the complaint alleges excessive rates charged by the defendant company. With the exception of a statement by a witness for the defendant, that the gross receipts for the year 1914 did not meet the expenses, and that, with a proper allowance for depreciation, a deficit of about $2,900 occurred, no evidence was produced at the hearing regarding the rates.

[1, 2] From a careful consideration of the record in this case, we are of the opinion that the facts developed by the testimony presented at the hearing do not justify the establishment of another telephone system in the city of Fairfield. The State

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Public Utilities Commission law provides an adequate way of obtaining good service, just as it provides a remedy for excessive rates. The defendant, since acquiring the telephone exchange in the city of Fairfield, has had ample time to make such improvements in the plant as may be necessary for the furnishing of an adequate and efficient service. Promises made by its management to the public and the press have not been fulfilled, and the condition of the physical plant and the failure of the defendant to make the necessary improvements warrant the Commission in ordering immediate action in this respect.

However, it is the opinion of the Commission that in a case of this kind, where inadequate service is shown to exist, but no steps have been taken to invoke the power of the Commission for the correction of such inadequacy, the proper remedy is not the granting of permission to a new company to enter the territory. The application of such a remedy would result in the duplication of the plant and equipment of the existing company, and would also result in divided service and its attending evils.

In view of the facts and circumstances in this case, the Commission will not, at this time, order the mutual company to cease operating its switch board in the city of Fairfield. The Commission is of the opinion, however, that the rural subscribers connected with this switchboard would be better served by reconnecting their lines and telephones with the exchange of the defendant. The Commission has no power to require individual subscribers to make such reconnection, and since it is recognized that intercommunication between the subscribers of the defendant and the subscribers of the mutual company is essential to users of telephone service in the city of Fairfield and the rural territory contiguous thereto, it appears that the establishment of a physical connection between the two switch boards is justified.

The final decision of the Commission on the question of issuing a certificate of convenience and necessity to the mutual company will, for the present, be reserved, and such decision will depend, in a large measure, on the action of the defendant company in taking the steps necessary to improve its service. The establishment of a physical connection between the two switch boards is provided at this time as a temporary arrangement to

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relieve a condition that is working an inconvenience and hardship on the users of telephone service in the city of Fairfield and vicinity.

The motion above referred to, made by the defendant, to dismiss the petition, and the motion made by A. J. Poorman et al., to be made parties complainant in this case, are now denied.

It is therefore *ordered* that the Commercial Telephone & Telegraph Company make such changes and improvements in its physical property in the city of Fairfield as may be necessary to furnish adequate and efficient service to its subscribers and the general public. Four months is considered a reasonable period of time within which to make such improvements.

It is further *ordered* that the Commercial Telephone & Telegraph Company and the Wayne County Mutual Telephone Company make such physical connection between the exchange of the former and the switch board operated by the latter in the city of Fairfield as is required for the furnishing of toll service and local service, including rural service, to the subscribers of each company. The manner and division of the cost of making such connection, the terms under which intercompany calls will be handled, and the schedule of rates or charges that should be established, will be left to the companies in the first instance; and if no agreement can be reached, a further hearing will be granted to the parties by the Commission and a supplemental order issued determining these matters.

The Commission reserves jurisdiction of the subject-matter and the parties for the purpose of making such further order herein as future developments may warrant.

Twenty days will be deemed a reasonable time within which the parties shall comply with this order.

By order of the Commission, this 25th day of August, 1915, dated at Springfield, Illinois.

Note.—For the policy of the various Commissions in regard to the admission of competitive utilities in a field already occupied, see note to Re Idaho Light & P. Co. P.U.R. 1915A, 2, at page 21.

In Re Twin Falls, Case No. F–56, Order No. 238, June 16, 1915, the Idaho Commission, while recognizing the rule laid down in Re Idaho Light & P. Co. supra, upon the application of a city for a certificate of convenience and necessity to construct and operate a

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water system where a water company then serving the city under an unexpired franchise had failed, in the face of persistent public demand, to take any steps to eliminate impurities in the water supply, said: "It would be unjust to the investors in the existing utility to issue to applicant city an unconditional certificate of convenience and necessity, for we believe it is unnecessary to duplicate the distribution system of the existing utility, and perhaps even the settling reservoir and filter beds now in use could be utilized, at least temporarily, by the city in the event it should be permitted to install its proposed system of waterworks. Since it is suggested in the application that the city be given the privilege of taking over the distribution system of the existing utility, either by purchase or condemnation, and it is stated in the answer of the company that the company has been at all times, and is now, willing to sell its entire system of waterworks to the city at a reasonable price, the Commission will not at this time issue its final order in this case, but will suspend further action herein for a period of thirty days from date of this order for the purpose of giving the parties hereto opportunity for further negotiations, in the hope that they may agree on some fair and reasonable adjustment as to the price and terms under which the city shall take over the company's plant."

MAINE PUBLIC UTILITIES COMMISSION.

IN RE RUMFORD FALLS LIGHT & WATER COMPANY.

[U-54.]

Discrimination — Rates — Larger consumers — Long term contracts.

1. Under § 32 of chapter 12 of the Maine Public Laws of 1913 as amended by § 3 of chapter 347 of the Laws of 1915, the Commission has power to approve a contract between a public service corporation and a municipality to furnish electric current for street lighting at a rate less than the domestic light rate named in its schedule.

Discrimination — Rates — Large consumers.

2. Under the Maine statutes no person may be given a reduced rate for electricity merely to induce him to use the current or to prevent him from generating his own power.

Discrimination — Large consumer — Special rates for city lighting — Approval.

3 The Maine Commission will approve a contract for reduced rates to a municipality for street lighting for a definite term so long as the price is sufficient to return some profit to the utility, and is open as long as the utility has surplus current to supply, without injury, to the general public dependent upon it; and it is immaterial that the

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unit required is large, or the character of its use confined to few customers.

Discrimination — Special rates — Large consumers — Condition.

4. The Maine statute presupposes, upon the approval by the Commission of a contract between a public utility and a municipality for a reduced rate for street lighting, the filing of an open rate similar to that upon which the contract is based, so that other applicants for the same service of the same character may know what they are entitled to.

[August 13, 1915.]

APPLICATION for approval of a proposed contract between petitioner and the inhabitants of town of Mexico under the provisions of § 3, chapter 347, Public Laws of Maine for the year 1915, to furnish electric current for street lighting at a reduced rate; granted.

By the **Commission**: The Rumford Falls Light & Water Company, a corporation duly organized and having its place of business at Rumford, in the county of Oxford and state of Maine, presents to this Commission a contract as yet unexecuted between itself and the inhabitants of the town of Mexico, and asks approval of said contract by this Commission.

Mr. F. O. Eaton, representing the company, explained to the Commission the circumstances which were claimed to make this contract necessary, and satisfied us that the terms and conditions of the contract were reasonable, and that the interests of the public and of the company would thereby be properly safeguarded and protected.

[1] Section 32 of chapter 129 of the Public Laws of 1913 provides in substance that it shall be unlawful for any public utility to furnish its product or service at a reduced rate, except for certain named purposes, and the furnishing of current for lighting streets of a city or town was not among the purposes for which a public utility could furnish its service at a reduced rate.

The proposed contract is for the furnishing by the company to the town of Mexico current for street lighting purposes, at a rate less than the regular domestic lighting rate named in the schedules of the company, and for a fixed term. The legislature of 1915, by § 3 of chapter 347, Laws of that year, amended § 32 by adding the following:

"And provided, further, that it shall be lawful for any public

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utility to make a contract for a definite term, subject to the approval of the Commission, for its product or service, but such published rates shall not be changed during the term of the contract without the consent of the Commission."

Contracts for comparatively long terms between a public utility and its customers, whereby a particular individual or corporation seems to be securing an advantage over a smaller customer, are not now favored by legislatures or Public Utilities Commissions. In the past, such contracts (sometimes written and sometimes oral "gentlemen's agreements") constituted the methods by which rebates and other special and unwarranted advantages were obtained. It was to make such practices impossible, or at least unlawful, that the legislatures in nearly every state during the last seven years have passed public utility acts and created Commissions to assist public service corporations in doing away with the necessity of these special agreements, and to so arrange matters between the corporations and the public that all business dealings should be carried on in the open, each having a full, mutual understanding of the acts and the rights of the other, and each having in the Commission a friend to whom he could at all times go with full confidence in finding a patient ear, a ready, though just, sympathy, and a full, calm, and judicial hearing and decision.

Under the Maine Utilities act all secret agreements are unlawful, and each public utility is prohibited, under heavy penalty, from charging or collecting, for any service rendered, any sum whatever which is not in strict conformity with its schedule of rates. This makes it necessary for each such utility to file with this Commission a schedule of rates showing each service, and the exact price therefor, which is offered to the public. In this way the public and the Commission are at all times fully informed.

By the terms of the law these schedules may be modified by the utility on ten days' notice, or by order of the Commission on hearing, either on complaint or on its own motion. While this works satisfactorily generally, there is a class of cases in which the welfare of the utility and of its prospective customers, and, we believe, of the public, require greater certainty as to the future rate for a particular service. Frequently the establish-

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ment of an enterprise depends upon the certainty of its being able to secure power at a known cost for an extended period. In other cases, where a change of the character of power used is contemplated, the user must know what the future cost will be.

[2] In still other cases, and the present is an example of this class, a prospective consumer of large units must determine whether he will generate his own power or purchase from some established utility. He can often produce his power at less cost than the fair price charged by the utility for its output delivered to its usual class of customers. This happens because he can use for generating power, a by-product of his regular business, or, as in the case of municipalities, does not expect any returns on the capital invested. None of these considerations would warrant special rates or especially favorable terms to such prospective users. No person may be given a lower rate to induce him to use the current, or to prevent his generating his own power. This decision is to be read with this always in mind.

[3] But such consumers afford an opportunity for larger producers of power to dispose of what otherwise would go unused. If this surplus energy is sold at any price above the cost of production and transmission, it returns some profit to the utility. To that extent, also, it assists the general public in carrying the overhead charges of the utility. If a contract is approved which does not promise its full *pro rata* of the utility's fair profit on its business as a whole, it will be on the ground that it takes care of its surplus product, and no such contract should be presented where it is reasonable to expect that the same units of product might have been disposed of on terms more consistent with the return of approximately the same percentage of profit lawfully enjoyed generally by the utility on its output.

It was to meet these different contingencies that the legislature enacted the statute above quoted. And so long as the price is sufficient to return some profit to the utility, and is open as long as the utility has current to supply without injury to the general public dependent upon it, it is obviously to the advantage of all that it be permitted to avail itself of the privilege. That the unit required is so large, or the character of its use confined to so few users that its customers under this rate will be few, should not operate against it, provided it keeps reasonably with-

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in the spirit of the law. These contracts should and will be scrutinized with great care, but the public interest does not require, and it is not the policy of the law to effect, anything that shall stand in the way of the widest reasonable and just expansion of the business of the public utilities of the state.

[4] The statute evidently presupposes the filing of an open rate similar to that on which the contract is based, so that other applicants for service of the same character may know what they are entitled to. It may well be said that a public rate for a class of service like that involved in the contract under consideration is of little practical value, because, in the very nature of things, there probably would be but one customer. But these schedules perform another service. The dealings of a public utility with all of its customers should be as public as practicable, to the end that they may be fully advised of all matters relating to its rates. It is necessary that the petitioner file with its schedule of rates a class rate containing the rate defined in its petition, which shall remain in force according to the terms of the statute.

It is therefore *ordered* that the contract between the Rumford Falls Light & Water Company and the inhabitants of the town of Mexico, copy of which is hereto annexed, be executed by said parties in triplicate, one original copy to be returned to this Commission, with the schedule on which it is based, and one to be retained by each of the contracting parties, and that when so executed and returned, it be and stand approved under and as in accordance with § 3, chapter 347, Public Laws of Maine, for the year A. D. 1915.

Given under the hand and seal of the Public Utilities Commission, at Augusta, this 13th day of August, A. D. 1915.

Benjamin F. Cleaves, Chairman, Wm. B. Skelton, Chas. W. Mullen, Commissioners, Public Utilities Commission of Maine.

Note.—Rates to the large consumer.

It has sometimes been held that service may be sold to the large consumer at a lower rate of profit than to the small consumer,—especially if the large consumer is a new customer,—to the benefit

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of the small consumer, since this will reduce the burden of general costs.

It often happens that it is better, both for the plant and for all of its customers as well, that large quantities of the products should be sold at even less than enough to yield the regular rate of profits upon the same, than that these quantities should not be sold at all. Such sales tend to reduce the cost per unit of producing the commodity, as well as to increase the total profits. As it is only when the profits are large enough to permit it that rates can be reduced, such sales may easily be of material assistance in securing lower rates. This phase of the situation is often entirely overlooked, but it is nevertheless a vital element in all rate questions. Re Manitowoc Gas Co. 3 Wis. R. C. R. 163 (1908).

Rates established by the company for certain classes of customers, or as they apply to certain classes, may not be unlawful even though returning less than their full proportion of profit. Re Public Franchise League, 24 Mass. G. & E. L. C. R. 20 (1909).

In Newburyport Petition, 26 Mass. G. & E. L. C. R. 27, 29 (1911), the Commission, in referring to differentials in prices of electricity, said: "This company has a very considerable investment, made primarily for the purpose of supplying the community with light. If employed for this purpose alone, the daily use of the investment would be brief and the cost per unit of electricity sold correspondingly high; but the sale of electricity for power almost invariably increases the volume of the output without necessarily increasing the investment, thereby reducing the average cost per unit sold, and so making possible a lower maximum price."

Because of such considerations, and because such increased efficiency in the use of the investment should lead to reductions in the maximum net price, the Board has been reluctant to interfere with certain differentials in price, especially those applying to power.

"The price at which electricity can be used for heating is not necessarily, or under all conditions, governed by the apparent cost of supplying it, but depends rather upon its value to the customer. It may, moreover, under some conditions, be furnished for this purpose at less than what appears to be the average cost, without actual loss to the town engaged in the supply. The propriety of trying to obtain this class of business must, therefore, largely involve at the outset considerations of commercial expediency. If the endeavor results in materially increasing the output without proportionately increasing costs, there will be some commercial justification for undertaking the experiment, and to a degree the interests of the taxpayers and customers generally may be promoted rather than injured." Marblehead Petition, 29 Mass. G. & E. L. C. R. 87, 89 (1914).

A special rate for a large portion of the company's output can only

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be justified upon the ground that it contributes to the general public advantage. "If it does not, the responsibility for its existence rests with the management, and any unfortunate results must be borne by the company rather than by the public." Chicopee Petition, 18 Mass. G. & E. L. C. R. 33, 34 (1903).

In Chicopee Petition, 24 Mass. G. & E. L. C. R. 60 (1909), it is said: "A serious criticism of the company's charges was the claim of their manifest unfairness to the average customer, due to the peculiar system of differentials in force. In almost any lighting company the possible economies and resulting advantages to the public are largely dependent upon the volume of the output, and the management is bound to avail itself of every reasonable opportunity for increasing its business. With this end in view, a schedule of rates contrived for the purpose of selling gas to do work otherwise more economically done with other materials, and effective to this end, may, under some conditions and in some companies, furnish very strong grounds for a differential rate. It should be clear, however, that the rate named is not a losing one, and that it will increase the company's profits as well as the volume of its business. Differentials of this kind are quite different in character, and afford no justification for that practice which seeks to charge a large consumer one price and a small consumer a higher price merely because of a difference in size."

Re Minimum Charge for Power, 1 N. J. P. U. C. R. 254, in holding that the charge of 50 cents per horse power per month is not excessive or unreasonable, and that a minimum charge of $1 per month for electric power is not unreasonable, the Commission said: "The supply of electricity for power purposes is subject to the same principles which govern in the supply of electricity for lighting, with, however, the difference that electric lighting is, to a certain extent, a necessity, and within some limits average rates are justified, provided the general application of such rates does not result in imposing too heavy a burden upon some classes of customers and at the same time relieving other classes from their fair share of the expenses incident to supplying them with service. The supply of electricity for power purposes is strictly a commercial proposition, and a company is not warranted in charging in accordance with any system of rates which results in transferring the obligations of paying any great portion of the costs from one set of customers to another set. The St. Louis Commission has said as follows in their report on the subject of electric rates: 'It believes that, as a general rule, a guaranty to use a specific quantity of current is not only inconsistent with the character of a public utility, but that even if the guaranty works to the advantage of the customer making it, it is, on account of the resulting discriminatory price, to the direct disadvantage of those customers not able to make a guaranty.' With this conclusion, we take issue. In mercantile business, generally, lower prices prevail or greater dis-

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counts are allowed in connection with the sale or purchase of large amounts of a product than are allowed where the amount changing hands is small. The variations between wholesale rates and retail rates which are justified in connection with the sale of electricity for power purposes are greater than similar variations in rates charged for almost every other commodity, whether it be that of a public utility or an ordinary manufactured product. This is seen to be a fact when careful study is made of the different items which go to make up the total cost of furnishing electric service. As stated in the Board's memorandum covering the subject of minimum charges for electric lighting, the costs for electric service readily fall into three general classes: First, those items which vary with and are in proportion to the number of customers carried on the books of the company; second, those expenses which vary with and are approximately in proportion to the demand made by each customer upon the company's plant and distribution system; and, third, those expenses which depend upon the amount of fuel burned to supply the electric current actually used by the particular customer. It is undoubtedly true that the most equitable rates are those which take into account the real costs.

"There are so many small factors entering into this subject, and which must be considered in evolving a schedule of rates, that such an evolution is not as simple as the mere statement of the case may appear to make it. For instance, two of the factors which are very difficult to allow for are: Distance from the plant of the particular customer and the effect upon the cost of the time when the service is demanded. So difficult, in fact, is it to make proper allowance for these factors, that it is customary to ignore the subject of distance from plant, and to consider that all customers are located at an average distance from the plant. In many rate schedules some allowance is made for the time of year when the demand for service comes; for instance, an amusement park operated only in the summer time, and supplied with current from a plant having a large portion of its machinery idle during the summer months, could reasonably be given special consideration. It must be remembered, however, that all such considerations must be included in the standard schedule in order that all customers, or possible customers having similar conditions, will receive service at similar rates. If it be agreed that the supply of electricity for power purposes is a commercial proposition, and a company is not justified in transferring any considerable portion of the costs from one class of customers to another class, the standard rate schedules must be arranged so that as near as possible each customer will pay his fair share of the cost. To accomplish this requires that every customer shall pay, first, his share of the customer's costs; and second, his proper share of the demand costs; and third, in addi-

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tion to the above, he must pay for his portion of those costs which vary with the amount of current which he uses."

It is a well-recognized fact among railroad managers, both passenger and freight, that an unusually low rate may be a profitable rate if it induces traffic to fill cars that would otherwise have to be hauled empty. In fact, the accepted theory of railroad freight rates is based on the idea of encouraging traffic to move at a low rate, provided that rate covers prime costs and makes some contribution toward meeting the fixed charges. Monheimer v. Coney Island & B. R. R. Co. 1 P. S. C. R. (1st Dist. N. Y.) 705.

Care must be taken, however, that this business is not undertaken unless there is some profit, that is, some return over and above the costs of operation.

In Waltham Petition, 17 Mass. G. & E. L. C. R. 13, 15 (1902) the Commission said: "Nearly one third of the company's gas output in the last fiscal year was sold to two of its customers, at special rates. For several years this practice has prevailed, resulting at times in sales at less than cost. Although the sale of so large a percentage of the entire output at less than the average profit may contribute to the general public advantage through the improved facilities which a substantial increase makes possible, the company certainly ought not to supply such customers at less than they might supply themselves from an independent plant, nor under any conditions at a loss. In our opinion, some improvement ought to be made in the rates for this service. It should at all times be the effort and purpose of the company, in the exercise of its quasi public functions, to ultimately secure a uniform rate for a like service to all its customers. The general policy of special rates is not to be encouraged, and they can only be justified when they clearly contribute to the general public advantage."

In Waltham Petition, supra, in referring to a contract for the supply of power to a street railway, the Commission said: "Following the practice not uncommon at that time, but now quite out of date, this contract was made upon the basis of the car-mile unit, instead of the kilowatt hour; and the weight of the evidence seems to be that it has been absolutely unprofitable to the company, and that it has perhaps been carried on at an actual loss. The contract ought not to be renewed at the old rates; and if it shall be, the shareholders, and not the customers, must expect to bear the burden thus imposed."

In Newton Petition, 17 Mass. G. & E. L. C. R. 17, 19 (1902) 70 per cent of the company's output of electricity was sold for street lighting, but the returns therefrom were only 40 per cent of its entire electric income. The Commission said: "It is unnecessary for the decision of this case to determine the vexed problem of how large a differential, if any, should be allowed in the price to the municipality

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for its use, as compared with the price to private consumers, but the Board cannot approve a policy by which the rates for municipal use are made so low as to impose upon private consumers the entire burden of the investment charge."

In Willcox v. Consolidated Gas Co. 212 U. S. 19, 54, 53 L. ed. 382, 400, 48 L.R.A.(N.S.) 1134, 29 Sup. Ct. Rep. 192, 15 Ann. Cas. 1034, is said: "We cannot see from the whole evidence that the price fixed for gas supplied to the city by the wholesale, so to speak, would so reduce the profits from the total of the gas supplied as to thereby render such total profits insufficient as a return upon the property used by the complainant. So long as the total is enough to furnish such return, it is not important that, with relation to some customers, the price is not enough."

Differentials have been held not justified on the mere size of the customers' bills.

"Concessions from the maximum price . . . based primarily and solely on the relative size of the company's customers" are not justifiable. Chicopee Petition, 24 Mass. G. & E. L. C. R. 60 (1909).

There can be no possible justification for the company to depart from its published schedule of prices, or to give any advantage, directly or indirectly, to one customer not offered to others enjoying or seeking the company's service under like conditions. Re Public Franchise League, 24 Mass. G. & E. L. C. R. 20 (1909).

In Re Public Franchise League, supra, it is said: "The municipal schedules, so far as they relate to the lighting of municipal buildings, contain special discounts, already described, which are not offered to private customers. The Board knows of no logical or consistent basis upon which such special discounts can be defended, and recommends their discontinuance."

In Brockton Petition, 29 Mass. G. & E. L. C. R. 23, 26 (1914) it is said: "There can be no real justification for any departure from the established schedules of prices, or for giving any advantage, directly or indirectly, to one customer not offered to others enjoying or seeking the company's service under like conditions. The Board, therefore, recommended that all special rates be discontinued as promptly as may be consistent with the fulfilment of existing contracts which cannot legally be canceled."

In the last-mentioned case it is also said: "The Board has had occasion frequently to consider and discuss in its decisions differential prices for electricity. It has admitted the general truth of the proposition so commonly urged, that, other conditions being equal, length of use of a given demand has an influence upon the company's costs. It has appreciated the weight of the appeal made to the commercial enterprise of a company's management to make prices that will attract business, and it has recognized the importance and desirability, in the interest of all its customers, of increas-

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ing output without proportionately increasing investment, in order thereby to decrease the average cost of the electricity produced and sold. But the Board is at the same time convinced that a mere difference in the quantity used does not of itself constitute such a difference in condition as to justify a difference in price, that differences in lamp installations are exceedingly unreliable indications of actual differences in demand, and that whatever may be said as to the importance of the length of use of a given demand, unless variations in use are sufficiently marked, their influence upon cost is slight, and, as a foundation for difference in price, probably negligible. Indeed, differences in price, where made, seem to be based upon considerations of commercial expediency rather than a purpose to establish prices which shall charge each customer as much, and no more, than he should pay."

The Board has had occasion repeatedly to say to companies that discriminations in price based solely on the amount consumed by different customers are not justifiable. Re Leominster Electric Light & P. Co. 25 Mass. G. & E. L. C. R. 17 (1910).

In the last-mentioned case it is also said: "That it may be necessary to make differentials under exceptional circumstances may be conceded, but if made, they must be upon the initiative of the company, rather than the Board. How far such differentials may be tolerated must depend primarily upon circumstances, and upon a clear demonstration of their immediate or future benefit to the general body of consumers. At least, it may be said that such differentials are not to be justified merely by the size of the customer's bill; that they should not be allowed except where the business is not otherwise obtainable; that they should be uniform to all persons for a like service; that the price should never be unnecessarily low, and should always be high enough to avoid a loss to the company."

A discrimination cannot be properly based on a school committee being a "very desirable customer of the company, because of the same hours during which its buildings consume current." Ibid.

Upon the question whether a single customer, served in different localities, is entitled to be considered a large consumer, see note to Re Oregon Power Co. P.U.R.1915C, 694.

See also on the question of rates to the large consumer, Re Oblong Gas Co. P.U.R.1915A, 598; Re Burlington Electric Light & P. Co. P.U.R.1915B, 117; Re Brodhead Municipal Electric Utility, P.U.R. 1915B, 524; Leavenworth v. Leavenworth City & Ft. L. Water Co. P.U.R.1915B, 611; Beloit v. Beloit Water, Gas & Electric Co. P.U.R. 1915B, 1005.

P.U.R.1915E.

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MAINE PUBLIC UTILITIES COMMISSION.

IN RE CLIFFORD M. TYLER et al.

[U-56.]

IN RE GALT BLOCK WAREHOUSE COMPANY.

[U-57.]

Valuation — Warehouse, earnings as basis of value.

1. Charges made by warehousemen will be given little weight in determining the value of their property and the amount of stock which properly should be issued in payment therefor, since the value of property is used to fix charges rather than charges to fix value.

Valuation — Purpose — Warehouse property — Purchase of business in part nonutility.

2. The Maine Commission did not make a valuation of warehouse property used in a business as a public utility, in authorizing a sale of property and the issuance of stock in payment therefor, where a large part of the profits from the business sold come from non-utility enterprises in which the purchaser can continue to fix prices.

Sale — Security issues — Purpose — Purchase of warehouse property.

3. Property and franchises used in a storage warehouse and general merchandise business were authorized to be sold to a corporation, which was authorized to issue stock of a par value of $30,000 in payment therefor, the sale being consistent with the public interests, and the sum of the capital to be obtained by the issue of stock being required in good faith for purposes enumerated in the Public Utilities act (Public Law 1913, chap. 129, § 35.)

[September 2, 1915.]

PETITION of Clifford M. Tyler and others for authority to sell warehouse property and franchises, and of the Galt Warehouse Company to issue securities for the purchase thereof; granted.

By the Commission: These petitions were heard and considered together. The first is a petition by Clifford M. Tyler, Daniel Tyler, Frederick B. Tyler, and Edwin N. Tyler, copartners under the name and style of the Galt Block Warehouse Company, doing business at Portland, for authority to sell their property, business, and franchises as warehousemen, to wit, the business, including its tradename, lease, and fixtures used in the storage warehouse and general mercantile business in said Port-

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land, to the Galt Block Warehouse Company, a corporation organized under the laws of the state of Maine, for $30,000 of the capital stock of said corporation.

The second petition seeks authority for the corporation to issue $30,000 of its capital stock at par for the purchase of said property and franchises. Public notice was ordered on both petitions, and proved as ordered. Hearing was held August 17, 1915.

The copartnership has been for many years conducting a general warehouse and mercantile business at Portland, and has built up a very profitable business. It has other substantial business interests and holdings which have been owned and operated under the same partnership managements. It now desires to separate its operations which are subject to the Public Utilities act from its other enterprises, so far as it can be done, for more convenient compliance with the requirements of that act.

[1] A comparatively large part of the income of so much of the business as is to be transferred to the corporation is realized from sources which are not themselves directly subject to the provisions of the Utilities act. The value of the property to be sold is dependent very largely upon its value as a going business, its good will, and, of course, its ability to continue to operate at its present charges. To the extent that the business done is that of a public utility, these charges must ultimately be determined largely by the value of the property employed. That must fix the charges, rather than the charges that. So that this element is, to that extent, of little weight in determining the value of the property and the amount of stock which properly should be issued in payment therefor.

[2] On the other hand, the parties carrying on the business realize a large part of their profits from nonutility enterprises in which the corporation may continue to fix its prices. This has been maintained in the face of competition so long that it is reasonable to expect it to continue. It has a real value to its present owners, and will continue to have such value under equally skilful management for the purchaser. The past experience of the undertaking indicates that it may reasonably be expected to show a satisfactory return on the amount at which it is intended to be capitalized.

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Under these conditions, and for the purposes of this case, the Commission has not undertaken to make a valuation of the property used and useful for the business of the Public Utility, and the order made herewith will not be regarded as of any binding force in any matter which may hereafter arise in connection with rates or otherwise.

[3] Now, after public notice and hearing and mature consideration of the testimony, we find that the sale described in the first petition is consistent with the public interests, and that the sum of the capital to be secured by the issue of said stock by said corporation is required in good faith for purposes enumerated in § 35, chapter 129, Public Laws of 1913, as amended, and it is *ordered and decreed*—

1. That Clifford M. Tyler, Daniel Tyler, Frederick B. Tyler, and Edwin N. Tyler, copartners as the Galt Block Warehouse Company, be, and they are hereby, authorized to sell the property and franchises described in said petition, hereto annexed, to the Galt Block Warehouse Company, a corporation organized under the laws of the state of Maine, and located at Portland, for the sum of $30,000.

2. That the Galt Block Warehouse Company, incorporated as aforesaid, be, and it is hereby, authorized to issue its common stock to the par value of $30,000, including five shares thereof already outstanding for incorporating purposes, and to deliver the same to the order of said Clifford M. Tyler, Daniel Tyler, Frederick B. Tyler, and Edwin N. Tyler at par in full payment for said property and franchises.

3. That said copartners, or their attorney of record in this case, and said corporation, report to this Commission in detail, each under oath, their several doings hereunder within ten days after their transactions hereunder shall have been consummated.

Given in duplicate original, under the hand and seal of the Public Utilities Commission of Maine, this 2d day of September, A. D. 1915.

Wm. B. Skelton, Chas. W. Mullen, Public Utilities Commission of Maine.

P.U.R.1915E.

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MINNESOTA RAILROAD AND WAREHOUSE COMMISSION.

IN RE NORTHWESTERN TELEPHONE EXCHANGE COMPANY.

Rates — Telephone — Reduction to meet competition.

A telephone company was authorized to reduce its rates to meet the lower rates of a competitor, where it did not appear that the proposed rates were within the operation of § 15 of the telephone act, which provides that no rates shall be allowed which are inadequate and which naturally tend to destroy competition.

[August 16, 1915.]

APPLICATION of the Northwestern Telephone Exchange Company for permission to lower its rates for local exchange service within the city of Brainerd; granted.

By the **Commission**: This telephone company has applied for authority to reduce rates in Brainerd from $2 to $1.75 per month on special line residence service, $1.75 to $1.50 on two-party line residence service, and $1.50 to $1 on four-party line residence service. The lower rates are those which are now being charged by the Minnesota Telephone Company,—a competing concern. The Northwestern Telephone Exchange Company has 1,012 telephones in service in Brainerd, claims to have an investment of $75,000, and that it is necessary in order to protect its investment and maintain its property to meet the lower rates. The Minnesota Telephone Company in an unverified statement opposes the application upon the ground that the Northwestern is without authority to operate an exchange in Brainerd; that the petition does not allege that the lower rates will produce a reasonable return upon the investment within the city of Brainerd, and that it should not be permitted to publish lower rates for the purpose of meeting competition until such time as it is required to place its rates upon an adequate basis in the cities of Mankato, Red Wing, Austin, and Albert Lea.

The Northwestern Telephone Exchange Company was operating an exchange in Brainerd upon July 1, 1915, when the telephone act became effective. It has filed its schedule of rates as provided by law, and it is doubtful if the Commission has the right to say that the telephone company was operating within

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that city without a franchise or other authority. At any rate, the question will not be decided upon the record now before us.

Under the telephone act no rates filed with the Commission shall be changed without an order of the Commission sanctioning the same, and no new rate shall take effect until the date named by the Commission, which shall not be less than ten days after it is filed.

Section 15 provides that:

"No telephone rates or charges shall be allowed or approved by the Commission under any circumstances, which are inadequate and which are intended to or naturally tend to destroy competition or produce a monopoly in telephone service in the locality affected."

The Commission is not prepared to say that the proposed rates are inadequate, and that they naturally tend to destroy competition. It is a plain case of one telephone company wishing to meet the rate of its competitor, and until a thorough investigation has been made the Commission cannot say that the rates of either company are too low. No such complaint has been made, and it will be doing the Northwestern Telephone Exchange Company an injustice to deny its application until such investigation has been made. There is no complaint charging that rates are inadequate in Mankato, Red Wing, Austin, and Albert Lea, and that part of the protest will be disregarded.

It is therefore *ordered* that the application be granted, and that the Northwestern Telephone Exchange Company may publish the said rates and make the same effective on the 1st day of September, A. D. 1915.

By order of the Commission.

OKLAHOMA CORPORATION COMMISSION.

COMANCHE TELEPHONE COMPANY et al.

v.

PIONEER TELEPHONE & TELEGRAPH COMPANY.

[Cause No. 2315; Order No. 939.]

Telephones — Transmission of message — Exchanges — Connections — Return of long-distance messages.

The privilege of directing the routing of the message, or desig-

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nating which of two competing lines shall be used, where two or more telephone companies maintain physical connections for the transmission of messages, should be accorded to the exchange originating the call, having regard for the quick despatch of the message and the least inconvenience to the calling party, and not the exchange terminating the call or the party calling; but this privilege is to be accorded only so long as it appears to be a just and rational policy.

[August 18, 1915.]

COMPLAINT alleging that defendant improperly refused to furnish telephone connections for the transmission of messages; defendant ordered to furnish connections.

Appearances: E. C. Patton for the complainant; Claude Nowlin for the defendant.

Humphrey, Commissioner: The complainant, Comanche Telephone Company, by H. E. Hendricks, manager, on May 18, 1915, filed the complaint herein, and thereafter, on June 8, the cause came on for hearing, all parties being present and ready for trial.

The parties are transmission companies, operating for hire in this state, and it is alleged that complainant owns and operates a toll line connecting the exchange at Comanche with the exchange at Addington; that defendant owns and operates a toll line between Duncan and Waurika, passing through Comanche and Addington; also a toll line between Duncan and Comanche; that defendant refuses to accept messages routed (or offered for routing) from Addington to Duncan over line of complainant to Comanche, although such routing is more direct; but, in lieu of such routing, requires the calls originating at Addington and terminating at Duncan to be made over its own line, thence north, passing the place of origin to Duncan.

The complainant prays that the defendant be required to permit the routing of messages north from Addington, through Comanche to Duncan, and points beyond, and to make connections and to put through calls so routed, impartially and with despatch.

The Commission, having heard and considered the testimony, finds that Duncan, Addington, Comanche, and Waurika are in line, each one with the others, Duncan being 9.6 miles north of Comanche, while Comanche is 8.6 miles north of Addington, while Addington is 6.2 miles north of Waurika, making a total

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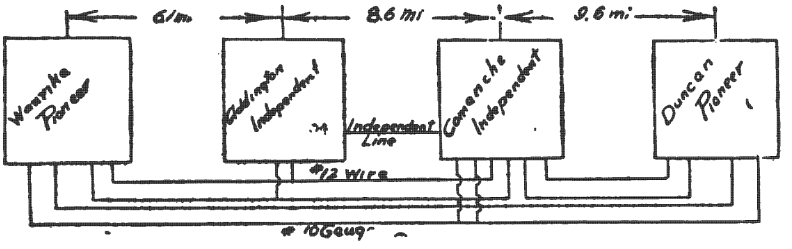
distance of 24.4 miles from Duncan on the north to Waurika on the south; that the Pioneer Telephone & Telegraph Company owns the exchange at Duncan and the exchange at Waurika; that it owns a toll line which connects the said places; that in addition to the aforesaid toll line, it owns two shorter lines, one of which makes connections between Duncan and Comanche, the other of which makes connections between Waurika and Addington, both being parallel to the first-mentioned line; that the exchange at Comanche belongs to the Comanche Telephone Company; that the exchange at Addington belongs to the Jefferson County Telephone Company; that the complainant owns a toll line connecting the exchange at Comanche with the exchange at Addington; that this line, by connections at its terminals with the two short lines above referred to as belonging to the Pioneer Telephone & Telegraph Company, makes a complete circuit from Duncan on the north to Waurika on the south, passing through Comanche and Addington.

The Commission further finds that is is possible for Addington to talk to Duncan in two ways:

1st. Over the Comanche short line to Comanche, and through the exchange at said place to Duncan over the Pioneer's short line between Comanche and Duncan.

2d. Over the Pioneer's short line from Addington to Waurika, through the Waurika exchange to Duncan, over the Pioneer's long-distance line.

See the following diagram:



The facts in this case are practically conceded, and perhaps a more comprehensive view of the question involved might be obtained from a review of the following testimony of E. H. Hendricks:

Q. Your complaint in this case is that the Pioneer Telephone

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calling to designate the circuit to be used, might prove inconvenient to the public at large (as many might have to wait during arbitrary tie up of line by one), and therefore detrimental; that since the transmission company (rather than the party calling) is by law, under the supervision of the Commission, that in order to render acceptable service to the public generally, and to meet the expectations and requirements of the Commission, the exchange originating the call should be accorded the privilege of designating the route to be used, where more than one route is accessible (or, of designating the line to be first used, when one or more initial lines are accessible in making a circuit including other lines or property necessary to complete connections in such circuit). This, of course, precludes the suggestion that the exchange terminating the message or, "putting up" the party called, should have the right to designate the line or lines to be used. The originating exchange is the one to which the calling party looks for the procurance of the necessary connections and for the handling of his business with despatch, and it would seem rather arbitrary to ignore the originating exchange while vesting in the terminating exchange the right of routing a message which the originating exchange is supposed "to put through."

As is above shown, the Comanche toll line connects with the Pioneer toll line at Comanche. The record shows that in the particular transaction that precipitated this case, the Addington exchange was trying to get connection for a call from Addington to Duncan via Comanche; we therefore assume that satisfactory traffic arrangements exist. It is to be observed that the reason assigned for refusal to complete the desired connections does not contradict this assumption.

The opinion heretofore expressed disposes of this case, but it is to be noticed that the proposition of permitting the originating exchange to designate the circuit or initial line (in case more lines than one are necessary to complete a circuit) is accorded as a privilege, which the exigencies of the situation suggest as being proper, but it is not intended by the Commission that this shall be considered as anything more than a privilege, which is to be accorded only so long as it appears to be a just and rational policy; or, in other words, it is not the intention of the Commission to establish an iron-clad rule recognizing any vested right,

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in which public service agencies may trade or traffic, as those in control of utilities used for public service must at all times proceed with due regard for the character of service to be furnished, and when the Commission permits the originating exchange to route a message, it is to be implied that the routing shall be done with as much despatch as possible, and with the least inconvenience to the calling party. An exchange having access to more than one long-distance line ought to maintain such relations with both as to be able to use either, when the public convenience requires such use.

Wherefore, the premises considered, and the Commission being fully advised, it is considered, ordered, and adjudged, that the Pioneer Telephone & Telegraph Company, so long as proper traffic arrangements exist, be and is hereby required to complete connections at Duncan for calls to said place, or points beyond, when originating at Addington and routed or directed over the Comanche toll line through Comanche to Duncan and other points.

J. E. Love, Chairman; W. D. Humphrey, Commissioner, Geo. A. Henshaw, Commissioner.

OREGON PUBLIC SERVICE COMMISSION.

SOCIAL SERVICE CLUB OF OAK GROVE

v.

PORTLAND RAILWAY, LIGHT, & POWER COMPANY.

[F-404; P. S. C. Or. Order No. 19.]

Service — Interurban railroads — Height of car steps.

1. Lower steps of interurban cars which exceed 15 inches in height above the top of the rail are unreasonably high, but the carrier was required only to remodel equipment so that steps would have a clearance of 16½ inches, where such clearance was required by the construction of a public bridge.

Service — Interurban railroads — Station platforms — Height of car steps.

2. Interurban station platforms give inadequate service where they are not level with the top of the rail but slope rapidly down so that the normal elevation of car steps is increased from 16½ inches to 24 inches at the stations.

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Service — Interurban railroads — Height of car steps.

3. In determining that lower steps of interurban cars should not be more than 15 inches from the top of the rail, the Commission stated that intermediate steps should not exceed 14 inches in height.

[August 26, 1915.]

COMPLAINT that lower steps of interurban cars are an unreasonable height from the top of rail; upheld and ordered that steps have a clearance of 16½ inches but company ordered to confer with city with a view of securing sufficient clearance on bridge to permit steps to be lowered to 15 inches, if possible.

COMPLAINT that inadequate number of cars are furnished for patrons; dismissed.

By the **Commission**: The above-entitled matter came on regularly for hearing before the Commission upon the complaint of the Social Service Club of Oak Grove, with respect to the adequacy and suitability in certain respects of the passenger cars operated by the Portland Railway, Light, & Power Company, an Oregon corporation, upon its interurban line of railway between Portland and Oregon City, Oregon; and as to the sufficiency of the train service for patrons at Oak Grove, during certain periods of the day.

Appearances: For the plaintiff, B. C. Skulason; for the defendant, Griffith, Leiter, & Allen, and P. J. Lonergan.

From the record the Commission finds the following facts:

[1] The Portland Railway, Light & Power Company operates a standard gauge interurban electric railway line between Portland and Oregon City, which crosses the Willemette river by the Hawthorne bridge in the city of Portland. The construction of the Hawthorne bridge is such as to practically compel defendant to maintain the steps to its interurban passenger cars which pass over the bridge at least 16 inches above the top of the rail. The passenger cars operated by the defendant in regular service between Portland and Oregon City are provided with steps, the lower of which vary from 16½ to 19 inches above the top of the rail.

Car steps which exceed 15 inches in height above the top of the rail are unreasonably inadequate. Their use is inconvenient to travelers, and in many cases attended with great inconvenience

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and even danger, and constitute a menace to public safety and health. In view, however, of the existing condition of the Hawthorne bridge and its approaches it is impractical to remodel the existing equipment of the defendant so that the lower steps shall be less than 16½ inches above the top of the rail.

[2] The unsatisfactory condition as to height of steps is aggravated at certain stations by the cross section of the station platform being such that the ground is not level with the top of the rail, but slopes rapidly down. This has the effect of practically increasing the elevation of the lower step, so that at some stations the lower step is as much as 24 inches above the station platform. This is inadequate service, which can be remedied at slight expense by additional gravel placed upon the platforms.

It appears that no effort has been made by the defendant to procure a readjustment of the approaches to the Hawthorne bridge which will permit the car steps to be lowered to a reasonable height. On the other hand, the design of the bridge is faulty in that insufficient clearance was provided for steps of a reasonable height on interurban passenger cars.

It is therefore found to be a reasonable practice and service for the defendant to afford that within thirty days it shall bring its various station platforms to an elevation equal to the top of the rail; that within thirty days it shall commence the reconstruction of the steps of its interurban passenger cars used between Portland and Oregon City, and within one year shall have completed the reconstruction thereof so that the lower steps shall not exceed 16½ inches above the top of the rail. The Commission recommends that defendant and the city of Portland confer with a view of adjusting the approaches of the Hawthorne bridge so that interurban cars with a lower step of 15 inches above the top of rail will clear the bridge structure; and if the bridge can be made to conform to such standard, then the defendant shall place its lower car steps to a maximum elevation of 15 inches above the top of the rail. The equipment hereafter placed in service upon this line of railway should reasonably conform to the standard now fixed.

[3] Intermediate steps upon the interurban cars should not exceed 14 inches in height.

This finding is predicated upon the record herein, which is

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confined to the Oregon City interurban line. However, the same principle would apply to the other interurban lines and to the city street railway lines operated by the defendant.

The conclusions the Commission has reached are in harmony with the findings of numerous other similar tribunals to which like complaints have been presented. See Re Height of Steps of Closed Surface Cars, 4 P. S. C. R. (1st Dist. N. Y.) 32; Davidson v. Public Service R. Co. (N. J. P. U. C.) P. U. R. 1915C, 168, and order entered Oct. 21, 1913; Remick v. Boston & M. R. Co. 4 N. H. P. S. C. R. 209; Re Bridgeport, Conn. P. U. Com., Dec. 30, 1911, Docket No. 25; Marinette v. Menominee & M. Light & Traction Co. (Wis. R. C.) P. U. R. 1915B, 468; Re Hyde Park Current Events Club, 2 Ann. Rep. P. S. C. Mass. 1914, vol. 1, p. 382.

The complaint herein also alleged that defendant did not provide sufficient number of cars to accommodate its patrons residing in the vicinity of Oak Grove, upon defendant's line of interurban railway between Portland and Oregon City. The record does not substantiate this portion of the complaint.

It is, therefore, *ordered, considered,* and *determined* that within thirty days from the date of the service of a copy of this order upon it, defendant shall bring its existing passenger station platforms upon its interurban line between Portland and Oregon City to an elevation equal to the top of the rail; that within thirty days from the date of the service of a copy of this order upon it, defendant shall commence to reconstruct, and within twelve months after the date of such service shall complete the reconstruction of its car steps upon such interurban passenger cars, to conform to the standards herein found to be just, reasonable, and adequate; that defendant shall confer with the city of Portland with a view of securing sufficient clearance on the Hawthorne bridge to permit car steps to be lowered to 15 inches; that in the event the approaches to the Hawthorne bridge can be made to permit the clearance of interurban cars with the lower step 16 inches from the top of rail, the defendant shall conform its interurban passenger cars to such standard in lieu of 16½ inches hereinbefore prescribed; that new equipment hereafter placed in service upon such interurban line shall conform to the standards hereinbefore found to be just, reasonable, and adequate; and that

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in other respects the complaint herein be dismissed. The Commission recommends the adoption of the same standards of construction for all other cars, urban and interurban, operated by the defendant.

WISCONSIN RAILROAD COMMISSION.

IN RE PLATTEVILLE MUNICIPAL WATERWORKS.

Service — Water — Ownership of meters — Municipal plant.

A municipal water company was exempted from the provision of a statute which required utilities to provide their own meters, where it was shown that owners of property were in a better position to protect meters than the companies; that an unusually large percentage of the population were renters; that the expense of making the change would be large, and that the company needed its funds for necessary additions to its mains.

[August 28, 1915.]

APPLICATION to compel municipal water utility to provide water meters; denied.

The appearances are set out in the opinion.

By the Commission: Complaint having been made that the Platteville Municipal Waterworks has failed or refused to install water meters at its own expense in the city of Platteville, a hearing was duly ordered on motion of the Commission and held at Platteville on April 15, 1915. S. W. Beers appeared on his own behalf, and the Waterworks Commission was represented by city attorney, R. A. Goodell.

The city attorney admitted that all water meters in Platteville are owned by the consumers, and formally requested that the city, as a water utility, be exempted from the requirements of § 1797M–90 in this respect.

Testimony was introduced tending to show that conditions at Platteville are not favorable to the change from individual ownership of meters to ownership by the utility. It was pointed out that the proportion of renters in Platteville is greater than in other comparable cities, owing to the fact that its chief industry is mining. Renters are held responsible for the maintenance of property including meters by the owners in a way which would be

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impossible if the meters were owned by the utility. This was said to apply peculiarly to Platteville, since a very large number of meters are so located in the basements, that fuel and other material are likely to be piled on them, and they are subject to injury by freezing. The superintendent stated that if the meters should be purchased by the city it would be necessary to relocate many of them at a considerable expense, and that additional employees would be required for repairing and protecting meters. As a further reason for retaining the existing practice, it was shown that, on account of the mining operations in and near the city, water from ordinary wells is polluted, and cannot be safely used. This condition makes necessary the immediate extension of mains to serve new additions to the city as they develop. Several extensions are contemplated in the near future, and the utility desires to use its available funds for this purpose, rather than in buying and repairing meters. The cost new of the meters now owned by consumers, as stated by the superintendent, is $9,312.90.

Having in mind the testimony, and upon investigation, the Commission is of the opinion that sufficient grounds exist to warrant the exemption of the municipal waterworks of Platteville from the requirement of § 1797M–90, above referred to, that utilities shall provide and own meters.

It is therefore *ordered* that the city of Platteville, as a water utility, be and the same is hereby exempted from the general requirement of § 1797M–90 of the statutes, that meters shall be furnished by utilities at their own expense.

Railroad Commission of Wisconsin, Walter Alexander, Halford Erickson, Carl D. Jackson, Commissioners.

CALIFORNIA RAILROAD COMMISSION.

IN RE SAN JOSÉ WATER COMPANY.

[Decision No. 2654; Application No. 1414.]

Service — Water — Meters — Extension.

1. Upon granting an increase in rates for water to conform to rates fixed by the Commission for the company in another city, it was ordered that all meters be paid for and set up at the expense of the

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company, and all extensions be made at its expense as provided in the other city.

Rates — Water — Uniformity — Accounting.

2. A water company was permitted to make slight increases in its commercial and domestic rates to conform to its authorized charges in another city, in order to secure uniformity in accounting, where no objection to the proposed increase was made.

Evidence — Burden of proof — Inability to pay rates.

3. Proof that a prosperous city had already apportioned all revenues derived from its tax levy, unsupported by any evidence of its inability to meet its legitimate bills from other sources, was held insufficient to show that an increase in the rates of water supplied to it by a water company should not be permitted upon the ground that it was beyond the reasonable ability of the city to pay therefor.

Water — Hydrants — Value of service.

4. The rates of a water company for fire hydrant service supplied to a city can, in no event, be more than the reasonable value of the service to the city, irrespective of the investment return and cost to the company; and the rates applicable to a large city for such service will not be established for a small city where the quality of the service is not the same.

Return — Reasonableness as a whole — Profit from a particular locality.

5. It does not necessarily follow that because the business of a public service corporation cannot be conducted at a loss as a whole, that investments to serve any consumer, or group of consumers, should show the same percentage of profit.

Valuation — Waterworks — Reproduction cost — Absence of records.

6. The reproduction cost method of valuation may be adopted in a rate case where no complete or accurate record of either the original cost or actual investment in the property of a public service company exists.

Evidence — Finding of value in another case — Acceptance by company — Effect.

7. The Commission is not bound in a rate case by the depreciated reproduction cost of a waterworks property found by its engineers in another case and accepted by the company, but such value may be taken as sufficiently conclusive to that fact.

[August 2, 1915.]

APPLICATION for permission to establish for the town of Los Gatos and inhabitants thereof a schedule of rates similar to the schedule established for the applicant in the city of San José; granted in part. The rates established are set forth in the order. It is suggested in the opinion that applicant apply rates fixed in the order over such of its territory as is not affected by rates theretofore fixed.

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Appearances: S. F. Leib for applicant; D. T. Jenkins for town of Los Gatos.

Loveland, Commissioner: Applicant, San José Water Company, supplies water to the city of San José, towns of Los Gatos and Saratoga, their suburbs and adjacent territory, and to the inhabitants thereof. Applicant desires permission to establish and put into effect, in the town of Los Gatos, the same rates for water as were fixed by this Commission for the city of San José, decision No. 1534, case No. 476, Monahan v. San José Water Co. 4 Cal. R. C. R. 1101 (1914).

On April 13, 1914, the town of Los Gatos turned over to this Commission its powers over public utilities, the authority to fix rates to be charged by applicant within the corporate limits of the town prior to this time resting in the board of trustees, and on November 14, 1914, applicant filed its present petition, alleging that the rates now in force in Los Gatos are unreasonable, unjust, and insufficient, in that they fail to provide sufficient revenue to earn a fair return on the capital investment, used, useful, and necessary in supplying the town of Los Gatos, and residents thereof.

Hearings were held on March 5, and on May 4, 1915, the time intervening between these hearings being desired for a more complete investigation by the Commission's representatives. At these hearings Mr. D. T. Jenkins appeared in behalf of the town of Los Gatos, in protest against such of the proposed rates as applied to the town of Los Gatos. Applicant has filed its closing brief, and the matters are now before me for final determination.

In the decision in case No. 476, the Commission left undisturbed the flat rates then existing in the city of San José. The flat rates now in force in Los Gatos are practically identical with those now operative in San José. The effect of this present application upon the flat rates will be immaterial, particularly when applicant's records show that at the present time only about 2.28 per cent of the total number of consumers in the entire Los Gatos district are flat-rate users. For these reasons I shall recommend that applicant be allowed to put into effect in Los Gatos the flat rates now operative in San José.

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Exclusive of the flat rates heretofore mentioned, the following tabulation shows applicant's present and proposed rates for the town of Los Gatos:

Present Rates.

For all water used by meter, monthly minimum charge for 4,000 gallons or less, $1.

All above 4,000 gallons, at the rate of 15 cents per thousand gallons.

For water used from hydrants for fire purposes, by the town of Los Gatos, for each hydrant per annum, payable quarterly, $5.

For water used for flushing sewers and street sprinkling, by the town of Los Gatos, 8 cents per thousand gallons.

Proposed Rates.

Commercial.

Monthly minimum for 4,000 gallons or less, 90 cents.
Between 4,000 and 10,000 gallons, 20 cents for each thousand gallons.
Between 10,000 and 100,000 gallons, 15 cents for each thousand gallons.
Above 100,000 gallons, 12 cents for each thousand gallons.

Municipal and County.

Schools, city hall, and other governmental department buildings at commercial rates.
Fire hydrants, owned by town, per month $1.75
Fire hydrants, owned by company, per month 2.25
Parks and lawns, each meter minimum monthly ..... .90
All water used, 12 cents per thousand gallons.
Sprinkling measured by tanks and records by town, 12 cents per thousand gallons.
Sewer flushing, each meter minimum monthly ..... $ .90
All water used, 12 cents per thousand gallons.

[1] Applicant makes no mention of the further order in case No. 476, relating to practices as identified with rates. It was further ordered in this case, that "all meters to be paid for and set up at the expense of the company. All extensions to property line to be made at the expense of the company."

These matters are so closely allied with the rates fixed in the city of San José, that I shall recommend their adoption in this application.

[2] The changes desired in commercial or domestic rates are very slight. Mr. Ryland, president, San José Water Company, estimated that the application of the proposed domestic rates would not result in a difference of more than $300 in the gross annual revenue. No objection is made to these proposed domestic rates by any of the applicant's present consumers. They now apply to the greater portion of applicant's system, and, for the sake of uniform accounting, I shall recommend that the proposed commercial and domestic rates be allowed to be put into effect.

This leaves for consideration only the rates applicant desires

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to apply to the town of Los Gatos itself, but before proceeding to a discussion of the issues involved, I shall refer to certain references contained in applicant's final brief, wherein unlimited confidence in the integrity and ability of its officers is expressed. Lieutenant Governor John M. Eshleman, who, as president of the Railroad Commission of California, heard and decided the issues in case No. 476, expressed a like confidence, and I should be doing violence to my honest convictions if I did not at this time express hearty approval of the probity of these gentlemen, and, were that the only question comprehended in this case, a decision would be easy and a source of great satisfaction to myself. In this connection I desire to express the same degree of confidence in the engineers of this Commission, who have assisted in case at bar, and in case No. 476, supra, as well as in the able and gentlemanly counsel appearing therein. Such confidence seems entirely justified, and I may say that in the case of our engineers, it is born of long experience of the close relationship in the work of this Commission. As was the case with Lieutenant Governor Eshleman, the fact remains that in the final disposition in this case I may feel difficulty in accepting the findings of experts.

I will now discuss the protests entered by the town of Los Gatos. Objection is made to the proposed municipal rates, on the grounds that it is unable to pay an increased rate; that the fire service rendered by applicant is not such as to warrant any material increase over the existing rates, and that applicant is now receiving an adequate return on its investment over the entire territory served by it. In support of these contentions considerable testimony was taken. I will now take up these objections in the order in which they have been mentioned.

[3] That rates are directly affected by the ability of the rate payer to meet them is patent to everyone. On this point I desire to refer to the words of President Max Thelen, in his opinion preceding this Commission's decision in case No. 597, Rogers and Central P. Land & Lumber Co. v. Sacramento Valley West Side Canal Co. and William F. Fowler, receiver of the property of Sacramento Valley West Side Canal Company, and case No. 673, Sacramento Valley Realty Co. v. Sacramento Valley West Side Canal Co. and William F. Fowler, receiver of

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the property of Sacramento Valley West Side Canal Company, decided June 14, 1915: "Another element which must be taken into account in establishing the rates in this case is the ability of the consumer to pay. It is a well-established principle of public utility regulation that whatever rates might be secured from the application of the usual principles of valuation, a public utility can in no event charge a rate which is beyond the reasonable ability of its consumers to pay. The rates must be reasonable to the utility, but they must, in any event, be reasonable to the public." Also quoting in authority therefor the opinion of Justice Harlan, in Covington & L. Turnp. Road Co. v. Sandford, 164 U. S. 578; 41 L. ed. 560, 17 Sup. Ct. Rep. 198: "The public cannot properly be subjected to unreasonable rates in order simply that stockholders may earn dividends." And again: "If a corporation cannot maintain such a highway and earn dividends for stockholders, it is a misfortune for it and them which the Constitution does not require to be remedied by imposing unjust burdens upon the public." And in case of Smyth v. Ames, 169 U. S. 466, 42 L. ed. 819, 18 Sup. Ct. Rep. 418: "What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

The conclusions reached by Commissioner Thelen seem to me not only to be sound law, but good common sense. However, the ability or inability of the consumer to pay is most elusive and difficult of determination, and in my opinion should not be invoked in the determination of a utility's rates, unless the evidence sustaining it clearly indicates the fact. In this particular case, beyond a statement submitted by the town of Los Gatos, showing that revenues derived from the tax levy have already been apportioned, there is nothing in the evidence to show an inability to pay. Not only might it well be that the apportionment of these revenues could have been adjusted to meet any exigencies that might arise, but I cannot bring myself to believe that a community with the standing and prosperity of this one is unable to meet any and all of its legitimate bills.

[4] Of the rates to be charged the town of Los Gatos, it is

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in those for fire hydrant service that the greatest increase is proposed. There are now 60 hydrants installed, all the property of the water company. Under the present rates the annual rental on these hydrants is $300, while under the proposed rates it would be $1,620, an increase of 440 per cent, greater than the town now pays for water for all purposes. Mr. Jenkins, for the town of Los Gatos, drew particular attention to the present hydrant rates in San José, as compared with those in Los Gatos, and considerable testimony as to the relative quality of fire hydrant service rendered by applicant in the two communities. It is a well-established principle that rates to be charged must in no event be higher than the service is reasonably worth, and it necessarily follows that the quality of this service, as distinguished from its cost, is a determining factor in these rates. If we assume that the fire hydrant rentals fixed by this Commission for the city of San José, on May 22, 1914, are still just and reasonable rates, and there is nothing to show that the lapse of this short time has made them otherwise, I am led to believe, after a careful study of the evidence, that the application of the San José hydrant rates to the town of Los Gatos will result in a rate higher than the service is reasonably worth to the public.

In the ultimate conclusion, however, it is not possible to fix the exact relative difference in the quality of this service as rendered in the two communities, or a rate based upon any such difference; neither can I bring myself to believe that applicant seriously contends that its fire hydrant service in San José is not superior to that in Los Gatos. For these reasons, and for others which will hereinafter appear, necessity of discussing this question in detail is not evident, though I do desire to call attention to a conclusion, which, based upon even a general understanding of the distinction between the districts served, seems logical. That the extent and value of the property protected per hydrant is greater, and that applicant's mains, pumping equipment, and other facilities for rendering fire service are larger and more efficient, in a city of the size and character of San José than in a residence town so situated at Los Gatos, is not only a reasonable conclusion, but one which seems fully verified by the evidence in both this and the former case.

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[5] I will now take up the last of the objections raised. Applicant's 1914 annual report on file with this Commission shows that its business as a whole is in a prosperous condition, although statements submitted by applicant tend to show that its Los Gatos territory is at present unprofitable. Obviously, rates are not based on the cost of service to each individual consumer, or group of consumers, but are based rather upon the cost of serving all consumers, and while it is admitted that applicant's business, when considered as a whole, cannot be conducted at a loss, it does not necessarily follow that investments to serve any consumer, or group of consumers, will or should show the same percentage of profit.

I have indicated most of the elements affecting this particular case and ulterior to the fundamental rules governing courts and Commissions in the fixing of public utility rates, and will now proceed to a discussion of the questions directly involved in the application of these fundamental rules. The general principles involved seem so well established that it is unnecessary to repeat them. The authorities are practically in agreement that just and reasonable rates are fundamentally based upon the gross amount which will pay proper operating expenses and give a fair return, together with loss by depreciation thereon, on the fair value of the property used and useful for the public service.

[6] The sum of $8,833 has been arrived at by both applicant and this Commission's engineers, as a proper annual allowance for operation and maintenance expenses for the year 1915, and I can see no reason to differ from this estimate. I have referred to the fundamental principles involved for the reason that it has been impossible for me to obtain from the evidence complete information on a number of elements, as outlined by the authorities, to be considered in the determination of fair value. That no complete or accurate record of either original cost or actual investment for this particular property exists, is stated by our engineers and admitted by applicant. In the conclusions as to these factors reached by both applicant's and this Commission's engineers, I am convinced an honest attempt has been made to arrive at the correct result, and I believe the divergence in these results as shown by evidence is but the logical outcome of a sit-

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uation where no exact records can be found. While I shall give due weight to the conclusions reached by both sets of engineers on these questions, I am inclined to think that on the facts of this case the reproduction cost method is perhaps the best guide obtainable under the circumstances.

[7] In case No. 476, the Commission's engineers found the depreciated reproduction cost of applicant's property, devoted to the exclusive use of the Los Gatos district, to be $171,188, with annual depreciation thereon of $3,646. Applicant's acceptance of this estimate, though in error as to the Commission's findings thereof (such findings being those of the Commission's engineers), is indicated on page 13 of its final brief, wherein appears the following: "We maintain that the value placed upon this property by the Commission in case No. 476 is the only one which can be considered in this (the present) application, and it is the value upon which rates should be predicated."

While I cannot completely agree with this statement, in view of the fact that this estimate just given was not only fixed by the Commission's engineers, but accepted by applicant, it seems sufficiently conclusive to definitely place the depreciated reproduction cost of applicant's property used and useful in supplying the Los Gatos district at $171,188, as of the date when such estimate was made, January 1, 1914. Net additions to capital investment bring this figure to $172,886.32 as of January 1, 1915, and $178,286.32 as of January 1, 1916, according to data submitted by applicant.

Not including returns from fire hydrant rentals, the Commission's engineers have estimated the gross annual revenue under proposed rates at $19,784.11, while applicant estimates them at $17,230.10.

The engineers of the Commission have based their estimate entirely upon the past records of this company, while applicant has forecasted the immediate future through means of perhaps a more detailed knowledge of the situation. While the exact return under my proposed set of rates is, of course, somewhat problematic, I am of the opinion that it will fall somewhere within the limits given.

The total gross income under the proposed rates for either

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calculation may be obtained by simply adding the annual hydrant rental of $1,620.

While a study of all these figures heretofore given as portions of the fundamental rule indicates that in any case the proposed rates will not give an adequate return on the depreciated reproduction cost, such depreciated reproduction cost is only one element of fair value, and must conform to and meet the peculiar circumstances existing in each particular case. Under the discussion of the objections raised by the town of Los Gatos, I have already indicated the particular circumstances affecting this case and the weight that should be given thereto, and am of the opinion that substantial justice will be done if this application is granted with the exception of the rates proposed for fire hydrant service, which rates I am of the opinion should not be fixed beyond the reasonable value of the service rendered simply in order that dividends should be earned.

Before proceeding to the order, I desire to call attention to something which was not contemplated in this application and upon which this Commission is not called to pass, namely, the application of the rates, which will be hereafter shown in the order, to the remaining territory served by applicant, except where they come in conflict with the rates already fixed by this Commission for the city of San José. I see at this time no valid objection to applicant's putting into effect the rates fixed by this order over such of its territory as is not affected by the rates heretofore fixed, and I suggest that applicant apply such rates to such territory. If any injustice results from their application the matter can be given complete consideration.

I recommend the following form of order:

ORDER

San José Water Company having applied to this Commission for an order authorizing an increase in rates for water delivered to the town of Los Gatos and the inhabitants thereof, and a public hearing having been held and being fully apprised in the premises,

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It is hereby found that the rates of this company (in lieu of which rates are established in this order) are unjust, unreasonable, or insufficient, and

It is further found that the following rates are just and reasonable rates to be charged by the San José Water Company to the town of Los Gatos and the inhabitants thereof until the further order of this Commission, and the same are hereby established, as follows:

Commercial.

Monthly minimum of 4,000 gallons or less, 90 cents.
Between 4,000 and 10,000 gallons, 20 cents for each thousand gallons.
Between 10,000 and 100,000 gallons, 15 cents for each thousand gallons.
Above 100,000 gallons, 12 cents for each thousand gallons.

Municipal and County.

Schools, city hall, and other governmental department buildings at commercial rates.
Fire hydrants, owned by company, per month $1.75
Parks and lawns, each meter minimum monthly ..... .90
All water used, 12 cents per thousand gallons.
Sprinkling, measured by tanks and record by city, 12 cents per thousand gallons.
Sewer flushing, each meter minimum monthly ..... $ .90
All water used, 12 cents per thousand gallons.

And it is further ordered that the commercial flat rates now charged by the San José Water Company in the city of San José are just and reasonable rates to be charged in the town of Los Gatos, and the same are hereby established, and

It is further ordered that the following practice be followed by the San José Water Company within the town of Los Gatos, to wit:

All meters to be paid for and set up at the expense of the San José Water Company.

All extensions to property line to be made at the expense of the San José Water Company.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

P.U.R.1915E.

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CALIFORNIA RAILROAD COMMISSION.

IN RE PRACTICE OF WATER, GAS, ELECTRIC, & TELEPHONE UTILITIES REQUIRING DEPOSITS.

[Decision No. 2689; Case No. 683.]

Payment — Service — Protective measures.

1. A utility has the right to take reasonable protective measures to insure payment for future service, although the ordinary tradesman may not make similar demands, since the utility is compelled to supply its service to all who demand it.

Payment — Service — Reasonableness of rule.

2. In determining what rule or regulation of a utility to insure payment for future service will be reasonable, consideration must be given to the desirability of subjecting the general mass of consumers to only such burdens as are reasonably necessary to insure such payment.

Discrimination — Payment for service — Uniformity of application of rule.

3. A rule or regulation insuring payment for future service should reduce to a minimum the possibility of discrimination by the utility in its application.

Payment — Service — Credit — Necessity for — How established.

4. Utilities may require an applicant for metered service to establish his credit before rendering service; and such credit may be deemed established if the consumer owns the premises, or makes a cash deposit, or furnishes a guaranty satisfactory to the utility, or has paid all bills of the utility promptly for a period of twelve months prior to the establishment of the rule.

Discrimination — Cash deposit — Classification of consumer.

5. Utilities, in permitting consumers of metered service to establish a credit by making a cash deposit, have the right to make such classification as may be necessary to prevent small consumers from bearing the burdens of large consumers, but all consumers within the same class must make the same deposit.

Payment — Service — Amount of cash deposit.

6. A maximum cash deposit of $2.50 for domestic or residence monthly metered service, or, in the case of larger consumers, a deposit not exceeding the average bill for twice the period for which collections are made, was held reasonable.

Payment — Service — Effect of delinquency of consumer not making cash deposit.

7. Utilities may demand that consumers guarantee future bills by a cash deposit where they receive metered service under a credit established other than by a cash deposit and default in payments, provided that service shall not be discontinued for failure to make such deposit

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until after the expiration of the time specified in a notice of intention to discontinue service.

Payment — Service — Effect of delinquency of consumer who has made cash deposit.

8. Upon the failure of a consumer who has made a cash deposit, to pay a bill for metered service, the utility may apply the deposit in so far as necessary to liquidate the bill, and require that the deposit be restored to its original amount, provided that service shall not be discontinued until the deposit has been entirely absorbed and after the expiration of the time specified in a notice of intention to discontinue service.

Payment — Service — Discontinuance of service for failure to re-establish credit — Notice.

9. A utility cannot discontinue metered service to consumers whose credit with the utility has become impaired or exhausted by failure to pay bills, unless it gives reasonable notice of intention to discontinue if the credit is not re-established.

Payment — Service — Discontinuance of service for failure to pay delinquent bills.

10. The California Commission refused to permit water, gas, electric, or telephone utilities to discontinue service to consumers by reason of nonpayment of bills for service theretofore delivered, since the utilities can protect themselves by demanding payment or the establishment of credit in advance of delivery of service.

Payment — Service — Telephones — Interest on deposits.

11. A telephone utility need not pay interest on deposits made by patrons to insure payment of telegrams and long-distance telephone messages sent through the utility.

Payment— Service — Telephone — Deposits — Telegrams and long-distance telephone messages.

12. A telephone utility may extend to its patrons the convenience of sending telegrams and long-distance telephone messages to the extent of such deposits as they may desire to make, or without a deposit.

Payment — Service — Guaranty —Deposit.

13. Utilities rendering service at flat rates may demand payment in advance for the period at which bills are normally rendered, but cannot demand guaranties or deposits for service to be rendered in the future.

Payment — Service — Discontinuance for failure to pay in advance — Notice.

14. A utility cannot discontinue unmetered service to consumers for failure to make payment in advance as required, unless it gives reasonable notice of intention to discontinue if payment is not made.

Payment — Service — Credit — Return of deposit.

15. Prompt payment of bills for one year sufficiently establishes a consumer's credit so that a cash deposit to insure metered service should be returned at the end of such period.

Payment — Service — Interest on deposit.

16. Utilities were required to pay 6 per cent interest on cash de-

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posits to insure payment for metered service, except where the service is discontinued in less than twelve months.

Service — When contract unnecessary — Application.

17. It is not reasonable to require an applicant for service to sign a contract, where the utility's rates, rules, and regulations are established by the Commission, but a written application may be required so that the utility may secure necessary information as to consumers.

Service — Charge for extension to abutting property — Extension not for use in immediate future.

18. It is a reasonable requirement that utilities should make, at their own expense, all service connection of normal size from their mains or lines along public highways to the property lines of abutting consumers, except that connection may be refused, subject to review by the Commission, if the utility believes that such extensions will not be used in the reasonably immediate future.

Return — Operating expenses — Cost of initial service installation not assessable to the consumer.

19. The cost to a utility of making an initial service installation is a proper capital account charge, and therefore should not be considered as an operating charge or as in any manner assessable against the individual consumer.

Service — Costs of disconnections and reconnections — Season resort or permanent community — Charge to consumer or operating expense.

20. A single uniform regulation cannot be established to provide for the cost of making a disconnection of service at the request of the consumer and a reconnection for a new or resuming consumer, where there are many disconnections and reconnections at season resorts and few in permanent communities, and the California Commission permitted utilities to meet such expense either by charging the cost directly to new or resuming consumers, or by prorating it over periodic payment for service, or by merging it into general operating expense.

Service — Who must pay for extensions within municipality.

21. A water, gas, electric, or telephone utility which operates under a general franchise authorizing the occupancy of all streets of a municipality may be required to make, at its own expense, such street extensions as may be necessary to serve applicants, provided that where it deems an extension unduly burdensome, the matter may be referred to the Commission for adjustment.

Service — Payment for extensions outside of municipalities.

22. In determining whether a water, gas, electric, or telephone utility should make, at its own expense, extensions outside of municipalities to serve applicants, consideration will be given to the fact that the utility should be liberal, but regard must also be had to its financial condition and the rights of existing consumers.

Service — Who must pay for extensions outside of municipalities.

23. A water, gas, electric, or telephone utility may be required to make extensions in unincorporated territory at its own expense, as it can agree upon with the applicant for service, provided that where it

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deems an extension unduly burdensome the matter may be referred to the Commission for adjustment.

Service — Extension — Ownership — Payment by applicant — Loan — Interest.

24. Upon an applicant for service paying in whole or in part for the cost of an extension, the title to the extension should be vested in the utility and the payment regarded as a loan, to be returned under reasonable conditions and to bear interest at the rate of 6 per cent per annum.

[August 12, 1915.]

INVESTIGATION instituted upon the initiative of the Commission with a view to establishing uniform practices among water, gas, electric, and telephone utilities as regards charges, deposits, contracts, or guaranties for service, service connections, and extensions; rules and regulations established.

Appearances:

(Water Utilities) H. P. Brown for Lone Oak Canal Company; Joseph Haber, Jr., for Marin Water & Power Company, Willits Water & Power Company, Western Water Company, Consumers Water Company, Domestic Water Company; Joy A. Winans for Eagle Rock Water Company; A. C. Greene for Spring Valley Water Company; Albert Raymond for South San Francisco Water Company; Joseph Shaw for Washington Water & Light Company, Oak Park Water Company; O. C. Heck for Heck Brothers; Stanley J. Bell for Union Water Company of California; Henry Goosen, *in propria persona*.

(Gas and Electric Utilities) Wm. B. Bosley and C. P. Cutten for Pacific Gas & Electric Company; H. H. Trowbridge for Southern California Edison Company, Long Beach Consolidated Gas Company, Santa Barbara Gas & Electric Company; S. M. Haskins for Pacific Light & Power Corporation; Short & Sutherland for San Joaquin Light & Power Corporation; Chaffee E. Hall for Great Western Power Company; M. S. Wilson for Southern Counties Gas Company; Allen Chickering for San Diego Consolidated Gas & Electric Company; Paul Overton for Los Angeles Gas & Electric Corporation; L. P. Lowe for Economic Gas Company; H. F. Jackson for Coast Valleys Gas & Electric Company; H. C. Keyes for Sacramento Gas Company; Farnsworth & McClure for Mt. Whitney Power & Electric Company.

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(Telephone Utilities) James T. Shaw for Pacific Telephone & Telegraph Company; E. P. Morphy for Home Telephone & Telegraph Company of Los Angeles, Santa Monica Bay Home Telephone Company; George B. Ellis for Union Home Telephone & Telegraph Company; Charles A. Rolfe and Arthur Wright for Southwestern Home Telephone Company; J. O. Jensen for Los Gatos Telephone Company.

Thelen, Commissioner: This proceeding was instituted by the Railroad Commission on its own motion for the purpose of investigating the rules, regulations, and practices of water, gas, electric, and telephone utilities in connection with charges and practices of various kinds as conditions precedent to service. Speaking in general terms, the principal matters under investigation herein are charges, deposits, contracts, and guaranties for (1) service; (2) service connections; (3) extensions.

A large number of complaints, both formal and informal, are constantly being made to this Commission against such rules, regulations, and practices. It is hoped that a comprehensive investigation will not only be advantageous to the utilities and their customers, but will also materially lighten the labors of this Commission in the disposition of such complaints.

This proceeding was instituted on September 23, 1914. Notice was served on each water, gas, electric, and telephone utility in the state subject to the Commission's jurisdiction with reference to the subject-matter of this inquiry or any portion thereof. A preliminary hearing was held in San Francisco on November 23, 1914, at which time argument was presented by the utilities in support of various rules, regulations, and practices.

It was stipulated at the preliminary hearing that the files relating to all informal complaints before the Commission relating to the subject-matter of this inquiry might be considered as being in evidence in this proceeding, and that the numbers of these informal complaints should be inserted in the record. It was also agreed that the Commission should send to each utility a circular letter requesting information concerning the subject-matter of this inquiry, and that this letter and answers thereto be considered in evidence herein.

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Thereafter, on December 5, 1914, the Commission mailed to each utility a "request for information," asking that each utility which desired to continue any charge or deposit as condition precedent to service furnish in detail the following information:

1. What practice, if any, does your utility pursue to secure the payment of your monthly bills, and at what time was this practice instituted?

2. What deposits or charges, if any, does your utility demand for so-called service connections, such as the charges of certain water companies for the service connection, and when did your utility first adopt such practice?

3. What practices, if any, does your utility pursue with reference to demanding charges or deposits of any kind as conditions precedent to the construction of extensions, and when was such practice first adopted? Make this explanation full and complete.

4. What other charges or deposits, if any, does your utility make as a condition precedent to rendering service, and when were such charges or deposits first demanded?

5. If your utility desires to continue to make any charge or require any deposit of the kind hereinbefore referred to, state the reasons in full in support of your desire, together with the facts, if any, on which you rely in support thereof, and such authorities, if any, as you can furnish on the legal questions, if any, involved.

6. What rule or rules does your utility consider equitable to be adopted with reference to any or all classes of charges or deposits as conditions precedent to service?

Replies were received from 120 water utilities, 72 gas and electric utilities, and 50 telephone utilities. These replies, by stipulation, are all in evidence in this proceeding.

The following utilities either incorporated with their replies, or prepared separately in the form of briefs, statements of their views on points of law:

Home Telephone & Telegraph Company (Los Angeles), Los Angeles Gas & Electric Corporation, Pacific Gas & Electric Company, Pacific Telephone & Telegraph Company, San Diego Consolidated Gas & Electric Company, San Joaquin Light & Power Corporation, Southern California Gas Company, Southern Sierras Power Company, South Los Angeles Water Com-

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pany, Southwestern Home Telephone Company, Union Home Telephone & Telegraph Corporation, Western States Gas & Electric Company, West Side Gas Company.

A number of utilities having expressed a desire to present further evidence, an adjourned hearing was held in San Francisco on June 4, 1915. At this hearing, the Commission introduced as Railroad Commission's exhibits Nos. 1, 2, and 3, statements containing the numbers of the informal complaints filed with this Commission, referring to the subject-matter of this proceeding, against the gas and electric utilities, the water utilities, and the telephone utilities, respectively. The exhibits show 410 complaints of this character against gas and electric utilities, 141 against water utilities, and 83 against telephone utilities.

At the hearing of June 4, 1915, the utilities completed the presentation of their additional evidence, and the case was submitted.

The subject-matter of this inquiry will be discussed under the following general heads: (I.) Service Charges; (II.) Service Connection Charges; (III.) Charges for Extensions; and (IV.) Modification of Rules.

I. *Service Charges.*

A large number of complaints have been made to the Commission concerning rules, regulations, and practices of utilities requiring the making of deposits, the giving of guaranties, and the signing of contracts to insure payment for service to be delivered in the future, and payments in advance for service.

In considering this subject, a distinction must be made between metered and unmetered (flat rate) service.

This branch of the inquiry will be considered under the following outline:

A. *Metered Service.*

1. Right of utility to protection in remetered service to be delivered.
2. Amount of deposits.
3. Procedure if consumer who has established his credit by showing that he owns the premises, or by furnishing a guarantor, or by paying all his bills promptly during the twelve months prior to the effective date of the order herein, becomes delinquent.

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4. Procedure if consumer who has made deposit becomes delinquent.
5. Minimum notice before utility may discontinue metered service.
6. Discontinuance of service for failure to pay delinquent bills.
7. Telegrams and long-distance telephone messages.

B. *Unmetered Service.*

8. Right of utility to protection in reunmetered service to be delivered.
9. Minimum notice before utility may discontinue unmetered service.

C. *Return of Deposits.*

10. Return of deposits after one year or on closing.
11. Interest on deposits.

D. *Contracts.*

12. Contracts.

[1–4] *1. Right of Utility to Protection in Remetered Service to be Delivered.*—The courts have uniformly held that a utility has the right to take reasonable protective measures to insure payment for service to be delivered in the future. It will be helpful to refer to the decisions on this point affecting water, gas, electric, and telephone utilities.

The leading decisions have been rendered with reference to gas utilities. In Shepard v. Milwaukee Gaslight Co. 6 Wis. 539, 70 Am. Dec. 479, the supreme court of Wisconsin upheld as reasonable a rule of a gas utility requiring the consumer to make a deposit or give other security for the payment of gas thereafter to be delivered to him. In Williams v. Mutual Gas Co. 52 Mich. 499, 50 Am. Rep. 266, 18 N. W. 236, the supreme court of Michigan upheld as reasonable a demand of a gas utility from a hotel keeper that he make a deposit of $100 to insure the payment of gas bills amounting to approximately $60 per week. In Owensboro Gaslight Co. v. Hildebrand, 19 Ky. L. Rep. 983, 42 S. W. 351, the supreme court of Kentucky assumed the general right of gas and electric utilities to require deposits, but held that a utility cannot lawfully make such demand from particular consumers while not making similar demands from other consumers similarly situated. In Cedar Rapids Gaslight Co. v. Cedar Rapids, 144 Iowa, 426, 48 L.R.A.(N.S.) 1025, 138 Am. St. Rep. 299, 120 N. W. 966, the supreme court of Iowa held that gas utilities may establish rules exacting payment in advance in reasonable amounts or the deposit of security. In Phelan

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v. Boone Gas Co. 147 Iowa, 626, 31 L.R.A.(N.S.) 319, 125 N. W. 208, the supreme court of Iowa, while holding that a gas utility may make and enforce a general rule providing for reasonable cash deposits or the signature of a person known to be responsible, decided that the utility acted beyond its rights in making a special demand for a deposit, for petty spite, from a consumer who had won a case in court from the utility. It will not be necessary to consider a number of other cases based on specific statutory provisions.

The same rule has been established with reference to water utilities. In Turner v. Revere Water Co. 171 Mass. 336, 40 L.R.A. 657, 68 Am. St. Rep. 432, 50 N. E. 634, the supreme court of Massachussetts said, by way of *dictum*, that water utilities may demand deposits if they do not know the consumer. In Harbison v. Knoxville Water Co. — Tenn. —, 53 S. W. 993, the court upheld a rule of a water utility providing for the payment in advance of a quarter's rent for water supplied for domestic purposes. In State ex rel. Milsted v. Butte City Water Co. 18 Mont. 199, 32 L.R.A. 697, 56 Am. St. Rep. 574, 44 Pac. 966, the supreme court of Montana said, by way of *dictum*, that a water utility may demand payment in advance for a reasonable time.

The leading case with reference to telephone utilities is Southwestern Teleg. & Teleph. Co. v. Danaher, decided by the Supreme Court of the United States on June 21, 1915, [238 U. S. 482, 59 L. ed. —, L.R.A. —, —, P.U.R.1915D, 571, 35 Sup. Ct. Rep. 886], in which case the court said: "It is uniformly held that a regulation requiring payment in advance or a fair deposit to secure payment is reasonable." For other cases containing similar language with reference to telephone utilities, see Buffalo County Teleph. Co. v. Turner, 82 Neb. 841, 19 L.R.A. (N.S.) 693, 130 Am. St. Rep. 699, 118 N. W. 1064 and Malochee v. Great Southern Teleph. & Teleg. Co. 49 La. Ann. 1690, 22 So. 922.

A number of state Commissions have rendered illuminating decisions establishing the same principle:

Cole v. Ft. Scott & N. Light, Heat, Water, & Power Co. 1 Mo. P. S. C. R. 130, decided on November 17, 1913; Re Easton Gas Works and Eastern Pennsylvania Power Co. decided by Board

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of Public Utility Commissioners of New Jersey on February 20, 1914; McAlester Pub. Co. v. Choctaw R. & Lighting Co. 5th Ann. Rep. Okla. C. C. vol. 1, p. 570, decided by Oklahoma Corporation Commission on November 23, 1911; Cauffiel v. Citizen's Light, Heat & P. Co. decided by Public Service Commission of Pennsylvania on October 6, 1914; Berend v. Wisconsin Teleph. Co. 4 Wis. R. C. R. 150, decided by the Railroad Commission of Wisconsin on September 15, 1909; Re Refusal of Farmers' T. Teleph. Co. to furnish service to William Lemcke, 13 Wis. R. C. R. 399, decided by the Railroad Commission of Wisconsin on December 9, 1913; Re Refusal of Service by Madison Gas & Electric Co. to F. M. Wylie, 13 Wis. R. C. R. 518, decided by the Railroad Commission of Wisconsin on January 2, 1914.

The question is frequently asked: "Why does a water, gas, electric, or telephone utility have the right to demand payment in advance, or deposits or other security to insure payment for service to be delivered, while the ordinary tradesman does not make similar demands?"

The answer is that the condition of the tradesman is entirely different from that of the utility. The tradesman sells only to whom he pleases. If he does not like a person or believes that his credit is not good, he is free to demand cash on delivery or to refuse to sell at all. The utility, on the other hand, is obliged to supply its service to all who demand it within the area to which the utility's obligations extend. As the law now stands, a baker may refuse to sell bread, but a water utility may not refuse to sell water to anyone who complies with its reasonable regulations. Water, gas, electric, and telephone service have come to be regarded largely as public necessities, and they may not be denied even to the impecunious or to the financially irresponsible members of the public. Hence, unless some measure of protection is accorded the utility, it will find itself in the position of having delivered, under compulsion, service for which it receives no pay. Such a condition not merely decreases the ability of the utility to perform effectively its duties to the public, but also affects injuriously those consumers who pay their bills and who, in the last analysis, will have their rates increased by the failure of other consumers to pay their bills.

Granting that some measure should be devised to protect the

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utility and the consumer who pays his bills, what rule or regulation would be reasonable? The bare statement that protection should be accorded is by no means synonymous with a declaration that this or that or the other means to attain this end must necessarily be adopted. The returns filed by the utilities in this proceeding show that some require payments in advance or guaranties, while other utilities have made no such demands; that some utilities requre either deposits or other guaranties in all cases, while others require them only if the applicant does not own the property; and that other utilities make no requirements even of nonproperty owners unless they are unknown or are known to be financially irresponsible. To say that a utility must necessarily have the right to demand a deposit in all cases of metered service is to confuse a means with the end, and to regard only one of the paths which lead to the goal, instead of keeping the eye steadfastly directed to the goal itself.

In considering what rule or regulation will be reasonable, consideration must also be given to the desirability of subjecting the general mass of consumers to only such burdens as are reasonably necessary to the accomplishment of the end in view. A rule requiring each consumer to make and maintain a deposit large enough to insure at all times the payment of all his bills would enable the utility to make 100 per cent collections, but such rule would be unjust because it would subject the great body of the consumers to burdens far greater than are reasonably necessary. As was said by the supreme court of Iowa in Cedar Rapids Gaslight Co. v. Cedar Rapids, 144 Iowa, 426, 48 L.R.A.(N.S.) 1025, 138 Am. St. Rep. 299, 120 N. W. 966: "The company may not base a rule on the theory that the people as a whole are dishonest, but it has the right to adopt a rule which, while giving the honest citizen what he pays for, will prevent the dishonest from getting that which he will never pay for."

Another requisite of the rule or regulation to be adopted is that it shall reduce to a minimum the possibility of discrimination by the utility in its application. A rule which permits a utility to demand a deposit from one applicant for service and to deliver service to another applicant, in exactly the same condition as the first one, without a deposit, is not a desirable rule. Many of the complaints which have been made to the Commission

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concerning the subject-matter of this proceeding have been complaints of discrimination. This objection could be removed by a rule requiring each applicant for metered service to make a deposit; but such a rule, as already suggested, would be inadvisable because it would compel deposits in many cases in which they are entirely unnecessary. Nearly every rule which has hitherto been suggested is subject to the objection that it permits wide discrimination by the utility.

The only feasible method which occurs to me to minimize the possibility of discrimination by the utility is to place the initiative on the consumer, and not on the utility. The utility is entitled to be reasonably safeguarded and to this end to have the consumer's credit established before service is delivered. This credit may be established by the consumer in one of several methods. If he owns the property, that fact alone should prima facie establish his credit. If he does not own the property, he can establish his credit by making a uniform deposit to be established for such cases. If he does not own the property and does not desire to make the deposit, he can establish his credit by presenting a guaranty for the payment of his bills, signed by a guarantor satisfactory to the utility. If he has paid all his bills to the utility promptly during the twelve months prior to the effective date of the order herein, his credit will also be deemed established. If the applicant is thus permitted to take the initiative and to establish his credit as herein suggested, the cases in which a deposit will be presented will be reduced to a minimum, while the utility and the consumers who pay their bills will secure the maximum protection to which they are reasonably entitled.

The return of deposits after a specified period and the applicability of deposits to service rendered to the same consumer at different successive premises will be considered in connection with other rules.

With reference to all rules herein established, the utilities may, if they so desire, as provided in rule 18 herein, establish and enforce uniform, nondiscriminatory rules more favorable to their consumers than the rules herein prescribed. A utility is not obligated to exact the full measure of that to which it is lawfully entitled, provided that discrimination does not ensue.

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I suggest the following rule as rule 1:

Rule 1. A water, gas, electric, or telephone utility may, under uniform, nondiscriminatory rules and regulations, require that an applicant for metered or measured service establish his credit before service is delivered, unless a prepayment device makes such procedure unnecessary. The applicant's credit will be deemed established if he (1) owns the premises; or (2) makes a cash deposit; or (3) furnishes a guarantor for the payment of his bills, satisfactory to the utility; or (4) has paid all his bills to the utility promptly during the twelve months prior to the effective date of the order herein.

[5, 6] *2. Amount of Deposits.*—In the relatively few cases in which deposits will henceforth be presented, it will be necessary to determine the amount of the deposit. No uniform rule on this subject is practised in this state, nor has any been adopted elsewhere.

Where service is metered or measured and is billed for monthly, the bill usually reaches the consumer within ten days after the meter is read. Another ten days or more is usually allowed for collection, after which time various practices are followed with reference to discontinuance of service. Generally the consumer has received service at least two months before his service is discontinued. A reasonable cash deposit for the consumers within any given class under a system of monthly bills would thus appear to be twice the estimated average monthly bill of the consumers within that class.

It is not feasible to estimate the average monthly bill for each individual consumer. This is a case in which the law of averages must govern. All consumers offering deposits within the same class should pay the same deposit. The utility should have the right to make such classifications of consumers as may be necessary to prevent small consumers from bearing the burdens in this respect of large consumers. The rule herein suggested will eliminate the exercise of individual discretion on the part of the utility's employees, and will minimize complaints of discrimination.

The consumers of domestic or residence metered service of water, gas, electric, and telephone utilities who establish their credit by furnishing deposits will generally not be the larger con-

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sumers. To establish the amount of a deposit by taking the average consumption of all domestic or residence consumers would obviously be unfair for the reason that such average would be considerably in excess of the average bills of the consumers who present deposits. Bearing in mind the actual consumption of the consumers who will present deposits, I find that the deposit for domestic or residence monthly service of water, gas, electric, and telephone utilities should not exceed $2.50.

In case of certain larger consumptions, the utility may desire to establish a schedule of more frequent collections and to demand a deposit which will be reasonable under the circumstances, not exceeding the average bill for twice the period for which collections are made.

I suggest the following rule as rule 2:

Rule 2. If an applicant for metered or measured service makes a cash deposit to insure payment for service to be delivered, the amount of the deposit shall be such as may be specified in the utility's rules, but in no event in excess of twice the average periodic bill of consumers of his class; provided, that the deposit for domestic or residence monthly service of water, gas, electric, and telephone utilities shall not exceed $2.50.

[7] *8. Procedure if Consumer Who Has Initially Established His Credit by Showing that he Owns the Premises, or by Furnishing a Guarantor, or by Paying All His Bills to the Utility Promptly during the Twelve Months Prior to the Effective Date of the Order Herein Becomes Delinquent.*—If a consumer who has initially established his credit by showing that he is the owner of the premises, or by supplying a guarantor satisfactory to the utility, or by paying all his bills to the utility promptly during the twelve months prior to the date of the order herein, later fails to pay his bills, the utility may demand as a condition precedent to further service and as a guaranty for the payment of bills thereafter to be incurred a cash deposit in the amount specified in rule 2. Service should not be discontinued until the expiration of the time specified in rule 5 herein after notice of intention to discontinue service unless such demand is complied with. The question of the recovery of back bills will be considered in connection with rule 6.

I suggest the following rule as rule 3:

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Rule 3. If a consumer who has initially established his credit by showing that he is the owner of the premises, or by supplying a guarantor satisfactory to the utility, or by paying all his bills to the utility promptly during the twelve months prior to the effective date of the order herein, later fails to pay his bills, the utility may demand as guaranty for the payment of future bills a cash deposit in the amount provided by rule 2; provided that service may not be discontinued for failure to make such deposit until the time specified in rule 5 herein after notice of intention to discontinue service unless such demand is complied with.

[8] *4. Procedure if Consumer Who Has Made Deposit Becomes Delinquent.*—If a consumer whose bills for metered or measured service are protected by a cash deposit fails to pay his bill, the utility may apply such portion of his deposit as is necessary to liquidate the bill, and may at the same time require that the deposit be restored to its original amount. If the deposit is not restored by the time it has been completely absorbed, service may be discontinued, provided that notice of intention so to do as specified in rule 5 herein has theretofore been given. In Reincke v. Public Service Gas Co. decided on April 20, 1914, the Board of Public Utility Commissioners of New Jersey very properly held that the utility cannot discontinue service as long as it still has in its possession a portion of the consumer's deposit.

I suggest the following rule as rule 4:

Rule 4. If a consumer who has made a cash deposit fails to pay a bill for metered service, the utility may apply the deposit in so far as necessary to liquidate the bill, and may require that the deposit be restored to its original amount; provided that service may not be discontinued until the deposit has been fully absorbed, and in no event until the expiration of the respective periods of time after notice of intention so to do, as specified in rule 5 herein.

[9] *5. Minimum Notice Before Utility May Discontinue Metered Service.*—Occasional complaints have been made to the Commission that utilities have arbitrarily discontinued service without notifying the consumer that they intended to do so. Fair dealing requires that the consumer be given reasonable notice of the utility's intention to discontinue service, so that he can make every reasonable effort to comply in time with the

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utility's lawful demands. Particular care should be taken not to injure irrigation consumers whose crops frequently may be ruined if water or electric energy to pump water is shut off.

I suggest the following rule as rule 5:

Rule 5. A water, gas, electric, or telephone utility may not, for failure to make a deposit, discontinue a metered service for which bills are normally made out monthly until the expiration of at least fifteen calendar days after written notice of intention so to do; nor where the bills are normally made out weekly until the expiration of at least four calendar days after written notice of intention so to do; nor where the bills are normally made out fortnightly until the expiration of at least seven calendar days after written notice of intention so to do; nor where the bills are normally made out for periods in excess of one month, until the expiration of at least thirty calendar days after written notice of intention so to do.

[10] *6. Discontinuance of Service for Failure to Pay Delinquent Bills.*—If a utility avails itself of the right herein recognized of requiring all consumers to establish their credit before metered or measured service is delivered, the utility will have only few delinquent bills except those which it voluntarily permits to accrue. Nevertheless in such cases, and also in cases in which the utility does not choose to avail itself of the right to compel applicants to establish their credit, the question whether the utility has the right to discontinue service by reason of the failure to pay a delinquent bill may arise.

On the one hand, it is urged by the utility that it should be accorded this right as the most efficient method of collecting its bills. Emphasis is laid on the fact that these bills are usually small, that the expense incident to collecting them by legal process is relatively high, and that persons failing to pay such bills are frequently execution proof.

On the other hand, it is contended that there is frequently an honest dispute with reference to a bill, and that if the utility has the right to discontinue service when payment is not made, the consumer is placed at an unfair disadvantage. The services of water, gas, electric, and telephone utilities have come to be regarded largely as necessaries of life, so that the consumer feels compelled to accede to the utility's demand even though he con-

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siders it unjust. A number of such cases have come to the Commission's attention. It is also urged that the utility's public duty requires the delivery of service on tender of the established rates or deposit, irrespective of real or alleged delinquencies.

In considering this question, I shall refer first to statutory provisions and decisions in California and then to the law in other states.

The law in California as affects water utilities was established in the case of Crow v. San Joaquin & K. River Canal & Irrig. Co. 130 Cal. 309, 62 Pac. 562. In that case an action was brought to recover damages for the refusal on the part of the defendant water company to furnish water to the plaintiff for the irrigation season of 1896, on tender by the plaintiff of the regular rates therefor. The water company testified its refusal on the ground that the plaintiff was indebted to it for water furnished to him in the years 1893 and 1894, and that under the regulations of the company, to which the plaintiff has subscribed, the payment of all dues and claims for previous service was made a condition precedent to the right to receive further water. At page 313, the court points out that there was no consideration for this rule or regulation, for the reason that it was the duty of the defendant water company to furnish the plaintiff with water, whether he agreed to these regulations or not. Referring to this point, the court says, at page 313: "The use of water, in this state, appropriated 'for sale, rental, or distribution' is a public use (Const. art. 14, § 1), and by the act of March 12, 1885 (Stat. 1885, p. 95), enacted to carry out this provision of the Constitution, it is made the duty of the company administering such use, 'upon demand therefor and tender in money of the established water rates . . . to sell, rent, or distribute such water' to the inhabitants of the county 'at the established rates regulated and fixed therefor, as in this act provided, whether so fixed by the board of supervisors or otherwise,' etc. And it is further provided in said act that for failure to do so an action may be maintained for 'damages to the extent of the actual injury sustained.' By § 552 of the Civil Code the same duties are also imposed upon such corporations in favor of those to whom water had been previously sold by such company. Price v. Riverside Land & Irrigating Co. 56 Cal. 431; McCrary v. Beaudry, 67 Cal. 120, 7 Pac. 264; Merrill

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v. South Side Irrig. Co. 112 Cal. 435, 436, 44 Pac. 720. It was therefore the duty of the defendant, under the law as established in this state, to furnish the plaintiff water upon a tender of the established rates; and this rule precludes the idea that any other duties can be prescribed or imposed, except the tender of the rate, as a condition for supplying water, as required by law."

The conclusion of the Crow Case to the effect that it is the duty of water utilities in this state to supply water upon tender of the established rates in advance, notwithstanding the failure to pay a back bill, was confirmed in Leavitt v. Lassen Irrig. Co. 157 Cal. 82, at page 93, 29 L.R.A.(N.S.) 213, 106 Pac. 404, where the court says: "In Crow v. San Joaquin & K. River Canal & Irrig. Co. supra, it was held that a consumer did not deprive himself of the right to take water under the rate established by law by reason of his refusal to pay under and in accordance with the terms of his contract."

The same conclusion is reached in San Joaquin & K. River Canal & Irrig. Co. v. Stanislaus County, 191 Fed. 875, 892.

With reference to gas and electric utilities, the subject was heretofore covered by § 632 of the Civil Code, enacted in 1905, and reading as follows:

"All gas and electric light corporations may shut off the supply of gas or electricity from any person who neglects or refuses to pay for the gas or electricity supplied, or the rent of any meter, pipes, wires, fittings, or appliances, provided by the corporation, as required by his contract; and for the purpose of shutting off the gas or electricity in such case any employee of the corporation may enter the building or premises of such person, between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon, of any day, and remove therefrom any property of the corporation used in supplying gas or electricity."

This section, however, was impliedly repealed with reference to all territory in which this Commission was granted jurisdiction over public utility rates by the Public Utilities act (Stat. Ex. Sess. 1911, p. 18), and was expressly repealed by § 86 of the revised Public Utilities act (Stat. 1915, chap. 91), effective August 8, 1915. Under §§ 30, 31, and 35 of the revised Public Utilities act, this Commission clearly has the authority to pre-

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scribe just and reasonable rules and regulations on all subjects which are included within the present inquiry.

I have been unable to find on this point any decision by the courts of California or any statutory provisions prior to the enactment of the Public Utilities act, in so far as telephone utilities are concerned.

In other states conflicting decisions have been rendered.

The following cases hold that water utilities may discontinue service for failure to pay delinquent bills:

McDaniel v. Springfield Waterworks Co. 48 Mo. App. 273; State ex rel. Milsted v. Butte City Water Co. 18 Mont. 199, 32 L.R.A. 697, 56 Am. St. Rep. 574, 44 Pac. 966; Jones v. Nashville, 109 Tenn. 550, 72 S. W. 985; Tacoma Hotel Co. v. Tacoma Light & Water Co. 3 Wash. 316, 14 L.R.A. 669, 28 Am. St. Rep. 35, 28 Pac. 516.

The following cases establish the same principle with reference to gas utilities: People v. Manhattan Gaslight Co. 45 Barb. 136; Vanderberg v. Kansas City Missouri Gas Co. 126 Mo. App. 600, 105 S. W. 17.

The same rule was established with reference to telephone utilities in: Rushville Coöp. Teleph. Co. v. Irvin, 27 Ind. App. 62, 59 N. E. 327, 161 Ind. 524, 69 N. E. 258.

In Southwestern Teleg. & Teleph. Co. v. Danaher, supra, the Supreme Court of the United States reversed a judgment for $6,300 in favor of a patron of a telephone company in Arkansas under a statute providing for the recovery of penalties for discrimination in telephone service, on the ground that under all the circumstances of the case the telephone utility had been deprived of its property without due process of law. The Supreme Court pointed out that the legislature of Arkansas had not declared unreasonable the rule of the telephone utility providing for discontinuance of service for failure to pay bills. While drawing attention to decisions in other states upholding the reasonableness of such a rule, the Supreme Court clearly intimates that a finding by competent state authority either way on this question will not be disturbed by the Supreme Court in the absence of facts clearly showing a violation of the 14th Amendment of the Federal Constitution.

A contrary conclusion was reached in the following decisions

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in other states, declaring unreasonable and void rules of various classes of utilities providing for discontinuance of service for failure to pay delinquent bills:

Water utilities—Crumley v. Watauga Water Co. 99 Tenn. 420, 41 S. W. 1058; Gas utilities—Gaslight Co. v. Colliday, 25 Md. 1; Telephone utilities—State ex rel. Webster v. Nebraska Teleph. Co. 17 Neb. 126, 52 Am. Rep. 404, 22 N. W. 237.

The Wisconsin Railroad Commission has taken the same view in a number of recent decisions. In Refusal of Farmers' U. Teleph. Co. to Furnish Service to William Lemcke, 13 Wis. R. C. R. 399, decided on December 9, 1913, the Commission, at page 402, said: "The question before the Commission, therefore, is whether a telephone company has the right to refuse service on the ground that previous bills have not been fully paid. A telephone company, as has been shown, may, by establishing proper rules, require its patrons to pay in advance for a reasonable period for the desired service, and if a patron who is in arrears to the company offers payment in advance for future service, we do not think it is consistent with its public duty for the company to refuse such service." (Quoting from 1 Wyman, Public Service Corp. § 451.)

In Re Refusal of Service by Madison Gas & Electric Co. to F. M. Wylie, 13 Wis. R. C. R. 518, decided on Jan. 2, 1914, the Wisconsin Railroad Commission applied the same principle to the delivery of gas and electric service. At page 521, the Commission says: "The authorities are not in accord as to the obligation of the company to serve an applicant who is in arrears at other premises, although he tenders ready money for present service, but the best considered cases take the view that it is inconsistent with public duty to refuse service under such circumstances. The authorities holding that one who is owing for past service cannot insist on future service until default has been made good, seem to consider the matter from the standpoint of the convenience to the company in making its collections. They extend the right of the private trader to the one engaged in a public calling, notwithstanding the apparent conflict between the right of the former and the public obligation of the latter."

After referring to the duty of the utility to collect its indebtedness promptly, the Commission, at page 522, continues:

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"Because of such duty a company is permitted to demand prepayment of present service where the charge may be determined in advance, or in case of metered service may require a deposit of a sum of money sufficient to secure payment for the service rendered during stated intervals for which credit is extended, or may require a bond to secure such payment. Failing to establish or to enforce a rule to secure the prompt collection of bills when due, the company stands in the position of any other creditor, and must resort to the courts to compel payment of such indebtedness. It may refuse to furnish service in the future unless prepayment is made, but because of its public duty it cannot condition such service upon the liquidation of past charges."

As already indicated, the supreme court of California took exactly this position in the Crow Case, supra, with reference to water utilities. The same reasoning applies to gas, electric, and telephone utilities. A finding by competent public authority either way will undoubtedly be sustained as reasonable. The utility has the right to protect itself both as to metered and unmetered service, as herein indicated, by demanding payment for service or the establishment of credit in advance of the delivery of service. In view of the decision in the Crow Case, I recommend that the Commission, in the interest of uniformity, apply the principle of that case to gas, electric, and telephone utilities as well as to water utilities.

I suggest the following rule as rule 6:

Rule 6. A water, gas, electric, or telephone utility may not discontinue service by reason of nonpayment of bills for metered or measured service theretofore delivered.

[11, 12] 7. *Telegrams and Long-Distance Telephone Messages.*—The replies from the smaller telephone utilities to the circular letter of December 5, 1914, indicate with remarkable unanimity a desire that this Commission enable them to protect themselves against losses from long-distance toll bills. This is for the reason primarily that they are dependent for long-distance toll service upon the larger operating companies which own the toll lines and to which companies they are responsible for all long-distance bills incurred by their patrons, regardless of whether they are able to make collection or not. The rule hereinafter suggested as rule 7 is intended to give telephone

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utilities the right to demand for themselves reasonable security in connection with this class of service. If the utility offers to extend to its patrons the convenience of sending telegrams and long-distance telephone messages to the extent of such deposits as the patrons care to make, the size of the deposit is left to the discretion of the patron. The larger telephone utilities, which own and operate their own long-distance toll lines, will probably consider it good policy in most cases to extend this convenience, without deposit, to all their patrons.

Deposits may be withdrawn at any time, after outstanding bills for telegrams and long-distance telephone messages have been paid. No interest need be paid on them, as this arrangement constitutes a special concession which obviates the need on the part of the patron of going to a telegraph office or long-distance prepay station. The rule hereinafter suggested requiring the return of deposits after a year is obviously not applicable here.

I suggest the following rule as rule 7:

Rule 7. A telephone utility may, under uniform, nondiscriminatory rules and regulations, extend the convenience of sending telegrams and long-distance telephone messages on credit to all its patrons or to the extent of such deposits as any of its patrons desire to make.

[13] *8. Right of Utility to Protection in Re Unmetered Service to be Delivered.*—It is a well-established principle of law, as indicated by the authorities discussed in connection with rule 1, that water, gas, electric, and telephone utilities which render unmetered or unmeasured service at flat rates may demand payment in advance. In service of this character, the amount to be paid for any given period of service is definitely known beforehand. Hence the case is one of payment in advance of a definite rate as distinguished from the presentation of some form of guaranty to secure the payment of a bill the exact amount of which cannot be known until the end of the normal service period.

As direct payment may be required, no form of guaranty is necessary or permissible. Promptly after the effective date of the order herein, all water, gas, electric, and telephone utilities

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shall return to the depositor all deposits heretofore made to guarantee payment for flat rate service.

I suggest the following rule as rule 8:

Rule 8. A water, gas, electric, or telephone utility delivering unmetered service at flat rates may, under uniform, nondiscriminatory rules and regulations, require payment in advance of delivery, for a period not to exceed that for which bills are regularly rendered as specified in the rate schedule, but may not demand guaranties to secure payment for service to be rendered in the future.

[14] *9. Minimum Notice before Utility May Discontinue Unmetered Service.*—A consumer should have a reasonable opportunity to pay his bills for unmetered service before the utility may discontinue service by reason of the failure of the consumer to make the advance payment.

Particular care should be taken not to injure irrigation consumers.

I suggest the following rule as rule 9:

Rule 9. A water, gas, electric, or telephone utility may not, for failure to pay for service, discontinue an unmetered service for which bills are normally made out monthly until the expiration of at least fifteen calendar days after written notice of intention so to do; nor where the bills are normally made out weekly until the expiration of at least four calendar days after written notice of intention so to do; nor where the bills are normally made out fortnightly until the expiration of at least seven calendar days after written notice of intention so to do; nor where the bills are normally made out for periods in excess of one month, until the expiration of at least thirty calendar days after written notice of intention so to do.

[15] *10. Return of Deposits after One Year or on Closing.*—In Reasonableness of Rules of Easton Gas Works and Eastern Pennsylvania Power Co. decided on February 20, 1914, the Board of Public Utility Commissioners of New Jersey said in part: "The issue may fairly be raised, however, whether after adequate demonstration on the part of the consumer of his financial reliability, a public utility avowedly according credit to reliable consumers may not be justly required to refund an advance deposit, or apply the same in liquidation of bills due.

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There seems little warrant in equity for the indefinite retention of such deposits, even though interest thereon be allowed. It savors altogether too much of a forced loan."

Frequent inquiries have been made of this Commission concerning the period of time during which a utility may retain a deposit which it has demanded to guarantee payment for metered service. The suggestion is constantly made that after all bills have been promptly paid over a period of time, such as a year, the consumer's credit should be deemed established and the deposit returned to him. Attention is also drawn to the frequent difficulty of finding consumers after a period of years, for the purpose of returning a deposit.

A consumer making a deposit covering service at one location shall have continuing credit therefor if he transfers his service to another location before the deposit is returned to him.

I suggest the following rule as rule 10:

Rule 10. After a cash deposit to guarantee payment for metered or measured service has stood unimpaired for twelve months, it shall be returned to the depositor. Upon closing any account the balance of any deposit remaining after the closing bill for service has been settled shall be returned promptly to the depositor.

[16] *11. Interest on deposits.*—That a utility should pay interest on cash deposits held by it to secure the payment of bills for metered or measured service seems clear and is admitted by the utilities with substantial unanimity. An interest rate of 6 per cent per annum seems reasonable.

I suggest the following rule as rule 11:

Rule 11. Interest at the rate of 6 per cent per annum must be paid by each water, gas, electric, or telephone utility on all deposits held by it to secure the payment of bills for metered service; provided that interest need not be paid if the service is discontinued within less than twelve months from the date of first taking service.

[17] *12. Contracts.*—Water, gas, electric, and telephone utilities frequently demand that an applicant sign a contract before service will be delivered. I do not now refer to extensions in unincorporated territory, where unusual conditions frequently obtain. Under the rules herein prescribed, the necessity for

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such contracts is not apparent. The consumer is bound by the utility's lawful rate, rules, and regulations on file with this Commission. No contract is necessary to insure their applicability to him. The utility will secure ample protection under the rules herein established in the matter of payment for its service and for the cost of disconnections and reconnections. The initial installation is added to capital account and is considered when rates are established. It is difficult to find any other reason for compelling an applicant for service to sign such contract other than to hold him for a term beyond that for which he would desire to be held if he were a free agent,—a motive to which this Commission cannot give its sanction.

Accordingly I recommend that henceforth an applicant for service from a water, gas, electric, or telephone utility be not required to sign a contract as a condition precedent to service; provided that it is not intended herein to pass on the question of contracts in connection with extensions in unincorporated territory, which matter is left open for consideration in subsequent proceedings. Utilities of these classes shall continue to have the right to require applicants to sign reasonable applications for service, so that their records may contain the necessary data with reference to all consumers.

I suggest the following rule as rule 12:

Rule 12. Except in the case of extensions in unincorporated territory, which matter is left open for consideration in subsequent proceedings, and of extensions in incorporated territory in cases in which the Commission may hereafter authorize the signing of contracts for service, a water, gas, electric, or telephone utility may not require that an applicant sign a contract for service as a condition precedent to service; provided that such utility may require that reasonable written application for service be made.

II. *Service Connections.*

This branch of the inquiry will be considered under the following outline:

13. Service connection charges.

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14. Charges for disconnecting and reconnecting services theretofore installed.

[18] *13. Service Connection Charges.*—Many complaints have been made to this Commission concerning the imposition by utilities of so-called "service connection" charges. The term "service connection," as here used, does not refer to extensions of mains, but is limited to installation of service from a public street, highway, alley, lane, or road to property abutting thereon. The "service connection" includes water and gas pipes, electric and telephone wires, water and electric meters, electric transformers, gas regulators, telephone instruments, and appurtenances.

The chief complaint has been directed to the service connection charges of water utilities. This matter was carefully considered by this Commission in Glendale v. Title Guarantee & T. Co. 2 Cal. R. C. R. 989, in which case this Commission, at page 991, said: "That it is the duty of a water company to supply service connections up to the property line and meters, where meters are used, without direct expense to the consumer, seems clear both on principle and on authority. Such requirement seems entirely reasonable. The service pipe up to the property line and the meters, where used, are as necessary in the performance of the water company's duty to the public as its reservoirs, wells, or mains. The consumer has no right to dig up the streets to lay a service pipe. That right belongs to the water company alone. It seems unreasonable to ask that the consumer should pay for service pipes and meters which are a part of the water company's system, which the consumer has no legal right to install and which are under the complete control of the water company."

The same principle, namely, that it is the duty of water utilities to install at their own expense meters and service connections from the mains to the curb line or property line of the consumer, has been consistently applied by this Commission in decisions subsequent to the Glendale Case.

The Wisconsin Railroad Commission has reached the same conclusion. In Janesville v. Janesville Water Co. 7 Wis. R. C. R. 628, the Wisconsin Commission at page 681, says: "The question as to who should own meters appears to be settled. The

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only point to be decided here is whether or not services are a part of the facilities which the utility is expected to furnish. The logical conclusion seems to be that the utility should install and own services to the curb line. The utility, and not the consumer, has the right to occupy the streets, and all pipes laid in the streets should be the property of the utility, and we believe should be put in by the utility. The business of the utility is to deliver its product to the premises of the consumer. If the utility should own the mains through which water is carried to various sections of the city, it seems equally true that it should own all parts of the distribution system as far as the consumer's premises. The service pipe from main to curb is as much a part of the utility's distribution system as is the main itself. Both parts of the equipment have the same purpose,—the delivery of water to consumer's premises. It is not believed that the utility should be required to install and own such portions of the service as are on private property. True, the utility very often owns meters, which are installed on consumer's premises, but such installation is done as a matter of convenience to the utility. As the purpose of the utility is to deliver water to the premises of the consumers, if other conditions were equal, the logical place for the meter would be at the property line. Piping inside the curb line stands in very much the same relation to the utility as does the piping and plumbing in buildings, and should be a part of the property of consumers."

The courts, with substantial unanimity, have reached the same conclusion:

Spring Valley Waterworks v. San Francisco, 82 Cal. 286, 316, 6 L. R. A. 756, 16 Am. St. Rep. 116, 22 Pac. 910, 1046; Title Guarantee & T. Co. v. Railroad Commission, 168 Cal. 295, 299, 302, 142 Pac. 878; Hatch v. Consumers' Co. 17 Idaho, 204, 40 L.R.A.(N.S.) 263, 104 Pac. 670; Consumers' Co. v. Hatch, 224 U. S. 148, 56 L. ed. 703, 32 Sup. Ct. Rep. 465; Pocatello Water Co. v. Standley, 7 Idaho, 155, 61 Pac. 518; Bothwell v. Consumers' Co. 13 Idaho, 568, 24 L.R.A.(N.S.) 485, 92 Pac. 533; Montgomery v. McDade, 180 Ala. 156, 60 So. 798; Pine Bluff Corp. v. Toney, 96 Ark. 345, 131 S. W. 680, Ann. Cas. 1912B, 544; International Water Co. v. El Paso, 51 Tex. Civ. App. 321, 112 S. W. 816; Cleveland v. Malden Water-

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works Co. 69 Wash. 541, 125 Pac. 769; State ex rel. Hodgdon v. Hoquiam Water Co. 70 Wash. 682, 127 Pac. 304.

No reason occurs why the same principle should not be applicable to gas and electric utilities. The following cases hold that it is the duty of gas utilities to pay for the meters, and in effect that the consumer cannot be called upon to pay for the apparatus used to measure gas any more than for the machinery used in its manufacture:

Montgomery Light & Water Power Co. v. Watts, 165 Ala. 373, 26 L.R.A.(N.S.) 1109, 138 Am. St. Rep. 71, 51 So. 726; Louisville Gas Co. v. Dulaney, 100 Ky. 405, 36 L.R.A. 125, 38 S. W. 703; Buffalo v. Buffalo Gas Co. 81 App. Div. 505, 80 N. Y. Supp. 1093.

The same logic applies to gas pipes to the property or curb line, to electric wires to the first point of support on the consumer's premises, to telephone wires to the place of consumption of the service, and to electric transformers and meters and telephone instruments and appurtenances.

Electric wires from the property or curb line to the first point of support and telephone wires to the place of consumption of the service are generally so short and inexpensive that these utilities do not require the consumer to pay for them, although they are in part on his property. The utility, however, if it desires to do so, may fairly insist that the consumer pay for pipes laid or poles set on the consumer's property for the purpose of serving him.

Promoters and other persons occasionally ask utilities to make service connections in advance of actual use of the service, for the purpose of enhancing the salability of their lots. It is obviously unfair to the utility and to its existing customers to compel the utility to make at its own expense service installations which may remain idle over long periods of time. Hence, subject to appeal to this Commission, a utility may refuse to make a service connection at its own expense unless it is satisfied that the service will actually be used in the reasonably immediate future.

It is not intended to pass herein on the question of municipal ordinances requiring the installation of service connections ahead

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of paving. That matter is left open for subsequent consideration.

While not formally passing on the question, I desire to draw the attention of water, gas, and electric utilities to the question whether it would not be well for them to purchase from their consumers such meters, regulators, and transformers as are now the property of the consumers.

I suggest the following rule as rule 13:

Rule 13. A water, gas, electric, or telephone utility which operates upon, under, or along any public street, highway, alley, lane, or road shall at its own expense install a service connection of normal size to the property line or curb line of property abutting upon said public street, highway, alley, lane, or road, or to such point on the consumer's premises as the utility may agree upon. The term "service connection," as herein used, shall include water and gas pipes, electric and telephone wires, water, gas, and electric meters, electric transformers, gas regulators, telephone instruments, and appurtenances. Subject to review by the Railroad Commission, a water, gas, electric, or telephone utility may refuse to make a service connection if it believes that the service will not be used in the reasonably immediate future.

[19, 20] *14. Charges for Disconnecting and Reconnecting Services Theretofore Installed.*—The cost of making an initial service installation is a proper capital account charge, and hence should not be considered as an operating charge or as in any manner assessable against the individual consumer.

After an initial service installation has been made, however, it may become desirable or necessary to disconnect and thereafter to reconnect the service.

It is frequently provided that if service is disconnected by reason of failure of the consumer to comply with the utility's reasonable rules and regulations, the consumer shall pay a specified fee to cover the labor of disconnecting and reconnecting. It is not fair that the utility, or the consumers who comply with the utility's reasonable rules and regulations, should be compelled to bear this expense, and such rule is entirely proper, provided the amount of the fee bears a reasonable relation to the actual average cost of making the disconnection and the reconnection. Janesville v. Janesville Water Co. 7 Wis. R. C. R. 628, 683.

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The problem becomes more difficult when a consumer asks that his service be disconnected and thereafter the same consumer or another consumer takes service at the same premises. The cost of making this disconnection and reconnection is properly an operating expense. It is possible to meet this expense in one of three methods: (1) the cost may be charged directly to the new or the resuming consumer; (2) the cost may be distributed over the periodic payments in such manner that it is returned to the utility within a designated time; or (3) the cost may be merged in the general operating expenses.

The problem is particularly important in California at many localities which are largely season resorts, where the disconnections and reconnections are frequent and the period of service to each individual consumer is relatively short. In such cases, it would seem unreasonable to require the relatively few permanent consumers in the particular locality or the more permanent population in some other locality served by the same utility, to pay increased rates by reason of the expense of disconnecting and reconnecting the services of the seasonal or transient consumers. On the other hand, in permanent communities in which there are relatively few cases of disconnections and reconnections, the utility may desire to regard such costs, particularly if they are low, as part of its general operating expenses, without the necessity of a special fee or other arrangement with the new or the resuming consumer.

It is not feasible to establish a single, uniform practice on this point. The establishment of reasonable rules and regulations for each community or type of consumers to cover this subject must be left in the first instance to the utility, subject to review by this Commission.

As the cost of disconnection and reconnection will thus be provided for, utilities will no longer be permitted to make the so-called "cancelation charges."

I suggest the following rule as rule 14:

Rule 14. Under reasonable, nondiscriminatory rules and regulations, to be prepared in the first instance by the utility, subject to review by the Railroad Commission, a water, gas, electric, or telephone utility may provide that the cost of disconnecting and reconnecting service connections may be (1) charged directly

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to the new or the resuming consumer; or (2) distributed over the periodic payments over a reasonable period of time; or (3) merged in the general operating expenses. The so-called "cancelation charges" of water, gas, electric, and telephone utilities are hereby abolished.

III. *Extensions.*

The subject of extensions will be considered under the following heads:

15. Extensions within municipalities.
16. Extensions outside of municipalities.
17. Ownership of extensions.

[21] *15. Extensions within Municipalities.*—This Commission's powers in the matter of directing public utilities to make extensions are specified in § 36 of the Public Utilities act, reading as follows:

"Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs, or improvements to, or changes in, the existing plant, equipment, apparatus, facilities, or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the Commission shall make and serve an order directing that such additions, extensions, repairs, improvements, or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If the Commission orders the erection of a new structure, it may also fix the site thereof. If any additions, extensions, repairs, improvements, or changes, or any new structure or structures which the Commission has ordered to be erected, require joint action by two or more public utilities, the Commission shall notify the said public utilities that such additions, extensions, repairs, improvements, or changes or new structure or structures have been ordered, and that the same shall be made at their joint cost, whereupon the said public utilities shall have such reasonable time as the Commission may grant within which to agree upon the portion or division of cost of such additions,

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extensions, repairs, improvements, or changes or new structure or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the Commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements, or changes, or new structure or structures, the Commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured." [Stat. Ex. Sess. 1911, p. 36.]

While the section apparently contemplates separate hearings on the facts of individual cases if the utility and the applicant have been unable to agree, a consideration of the principles involved may serve to clarify the situation for all parties, and to reduce materially the number of cases of this character which are continually coming before this Commission.

Wyman, in his work on Public Service Corporations, expresses his views on this subject in §§ 281 and 797, vol. 1, as follows:

"Sec. 281. *Obligation to the Community.*—It is obvious that the problems raised in this topic have not been disposed of as yet. It is plain that the existing facilities must in many instances be further developed in readiness to give service to those beyond the present lines, since what has really been undertaken is the proper service of the whole community dependent upon the established company. This at least involves the well-settled central territory within which service is plainly demanded, whether mains have been laid in all the streets or not. Certainly all premises situated within the network of the existing mains and within convenient connecting distance of their lines should be served. All of these premises come within the sphere of influence, already established, differing slightly from premises abutting. But the law will soon require, if it does not already, that the existing mains must be gradually extended as the growth of population in the community which the corporation has undertaken to serve demands the expansion."

"Sec. 797. *Facilities which the Service Requires.*—In most of the public employments of the modern type what is undertaken is not merely the devoting of particular equipment to public use,

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but rather the rendering of a certain service to the community with which it professes to deal. Thus a modern railroad plainly undertakes general transportation along its route; and since it has professed this general service it must see to it that it has sufficient equipment to handle the business which it has in effect invited by this general profession. The term 'adequate facilities' is not in its nature capable of exact definition. It is a relative expression, and has to be considered as calling for such facilities as might be fairly demanded, regard being had, among other things, to the extent of the demand for transportation, and the cost of furnishing the additional accommodations asked for. All this is particularly true of the municipal services—such as waterworks, gas plants, electric plants, and telephone systems. There are sufficient authorities, most of which have been discussed elsewhere, to the effect that their obligation to give service is not confined to the original pipes which have been laid, or wires which have been strung. Such companies are held to undertake the service of their communities; and they must, to speak in general, be prepared to extend this system throughout their district to meet the reasonable demands of the growing community."

This subject was carefully considered by the Supreme Court of the United States in Russell v. Sebastian, 233 U. S. 195, 58 L. ed. 912, L.R.A.—, —, 34 Sup. Ct. Rep. 517, Ann. Cas. 1914C, 1282, decided on April 6, 1914. In this case, the Supreme Court held that the service of a public utility holding a general franchise within a municipality is a community service, and that the utility is under the implied obligation to serve the entire community.

In the Russell Case, the Supreme Court decided that the Economic Gas Company, which, under the constitutional franchise granted by § 19 of article 11 of the Constitution of California prior to its amendment on October 10, 1911, had already constructed a gas distributing system in certain of the streets of the city of Los Angeles for the purpose of supplying gas to the inhabitants of said city, had a right to extend its system through all the streets of the municipality, and that the constitutional franchise was not limited to laying gas mains in the streets already occupied by the company on October 10, 1911. In other words, the Economic Gas Company had a constitutional fran-

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chise to construct its gas distributing system upon any and all streets within the city of Los Angeles. After reaching this conclusion, Mr. Justice Hughes indicates that a utility which has a franchise to construct its system on all the streets of a municipality is under an obligation to supply service to the entire community of such municipality. He states on page 208 of the Reporter:

"The service, as has been said, was a community service. Incident to the undertaking in response to the state's offer was the obligation to provide facilities that were reasonably adequate. [Citing cases.] It would not be said that either a water company or a gas company, establishing its service under the constitutional grant, could stop its mains at its pleasure and withhold its supply by refusing to extend its distributing conduits so as to meet the reasonable requirements of the community. But this duty and the right to serve, embracing the right under the granted privilege to install the means of service, were correlative."

The most recent decision which discusses the obligation of a public utility to extend its mains is Lukrawka v. Spring Valley Water Co. decided by the supreme court of California on February 13, 1915, and reported in P. U. R. 1915B, 331, 146 Pac. 640. In this case, it appears that Spring Valley Water Company has a constitutional franchise to construct its water system in the city and county of San Francisco to supply the municipality and its inhabitants with water. Complainants sought a writ of mandamus to compel the water company to extend its mains to supply water to complainants in the Richmond district in San Francisco. The superior court rendered judgment in favor of the water company. This judgment was reversed by the supreme court.

Justice Lorigan, after referring to Wyman's views and the Russell Case, supra, concludes on page 343 that the water company undertook a community service, as follows: "We are of the opinion, therefore, for the reasons given and under the authorities we have referred to, that when the respondent accepted the franchise offered by the state and undertook to supply the municipality of San Francisco and its inhabitants with water, it assumed a public duty to be discharged for the public benefit; a community service commensurate with the offer of the franchise

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which involved the duty of providing a service system which would be reasonably adequate to meet the wants of the municipality not only at the time it began its service, but likewise to keep pace with the growth of the municipality, and to gradually extend its system as the reasonable wants of the growing community might require, and as it appears from the petition in this case that respondent is in a position to discharge this duty toward petitioners by a reasonable extension of its mains it should have done so on their demand, and, having refused, may be compelled to do it."

Justice Lorigan then states a necessary qualification to the foregoing rule, as follows: "In reaching this conclusion it is of course to be borne in mind that the right of an inhabitant of the municipality, or the inhabitants of a particular portion of it, to compel the service to them by the water company through the extension of its system, is not an absolute and unqualified right. The fact that the water company has undertaken to serve the entire municipality, and that it would be of advantage to an inhabitant thereof, or a number of them, to have the water system extended to supply them, would not of itself be sufficient to require or compel the company to make the extension. The duty which the water company has undertaken is of a public nature and to meet a public necessity for the supplying of water to the community. The obligation of the company is not to supply each or any number of inhabitants of the municipality on demand as an absolute right on their part, but it has only assumed and become charged with the public duty of furnishing it where there is a reasonable demand for it and a reasonable extension of the service can be made to meet the demand. The right to require the service and the duty of furnishing it by an extension of the water system is to be determined from a consideration of the reasonableness of the demand therefor."

That the reasonableness of a particular extension must be determined upon the facts of the case was held by Justice Lorigan on page 345, as follows: "Whether it does or not is to be determined by a consideration of the facts in each particular case, and, among other things, by a consideration of the duties of the company, the rights of its stockholders, the supply of water which the company may control for distribution, the facilities for making

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extensions to a locality beyond its present point of service, the rights of existing customers, the wants and necessities of the locality demanding it, and how far the right of the community as a whole may be affected by the demanded extension. We refer to this matter of reasonableness of demand to be considered in determining the right to require the extension of service on account of the general language used in the authorities cited in sustaining the implied obligation of a public service corporation under its charter to supply all the inhabitants of a municipality with water. While this is the obligation it undertakes, the right of the inhabitants of the municipality to have it discharged is, as we have said, not an absolute but a relative one which may be enforced only when conditions are such that there exists a reasonable demand for the fulfilment of the obligation. In the case at bar the facts charged in the petition show that there is such a reasonable demand for such an extension, and as there is a liability on the respondent under such circumstances to comply with it, it may be compelled to do so."

A number of decisions in other states also establish the general duty of a utility holding a general franchise, to serve the entire community.

In Phelan v. Boone Gas Co. 147 Iowa, 626, 31 L.R.A.(N.S.) 319, 125 N. W. 208, the court says on page 209 of the Reporter: "By accepting from the city the franchise to lay pipes and mains in the streets and alleys and through them furnish the inhabitants and the public with fuel, illuminating and power gas, the company assumed a public duty. That duty was to supply gas at reasonable rates to all the inhabitants of the city, and to charge each the same price and furnish on the same terms as it did to every other for like service under the same or similar conditions."

In Bothwell v. Consumers' Co. 13 Idaho, 568, 24 L.R.A. (N.S.) 485, 92 Pac. 533, at page 534, the court says: "The company in the enjoyment of its franchise privileges is placed by the Constitution under a public duty to supply water to all living within the franchise limits, on payment of the rental rates. It owes this duty to everyone so long as it has water to sell, whether he be on the line of its main or at a great distance therefrom."

In Pocatello Water Co. v. Standley, 7 Idaho, 155, 61 Pac. 518, the court at page 518 says: "Under the said franchise the

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respondent has been granted the right to lay its mains and pipes 'over, along, and under' the streets, alleys, and highways of said city for the purpose of supplying said city and its inhabitants with a sufficiency of pure water. It had the authority to lay all of the mains and pipes in said streets and alleys necessary to accomplish the purposes for which said franchise was granted. It is obliged to lay its mains and pipes in said streets and alleys, and to deliver water to the consumers at its franchise limits, and to the line of the premises of the consumer, if such premises border on said franchise limits."

In Monahan v. Pacific Gas & Electric Co. 5 Cal. R. C. R. 298, this Commission considered this general question. One of the issues presented in that case was the utility's duty to extend its electric distributing system within the city of San José. After referring to the rule of the Russell Case, this Commission, at page 302, said: "It applies to all classes of utilities which receive a franchise authorizing them to use all the streets of a city, such as the constitutional franchise which has been granted by the state itself to all electric, gas, and water companies which started construction in this state in the streets of any city prior to October 10, 1911. Each of these classes of utilities, as well as any other utility which has heretofore secured or may hereafter secure a franchise authorizing it to use all the streets of any of our California cities, is under the correlative duty of giving service to all the inhabitants of the city. While it is possible that it may be necessary in some of our cities having wide territorial extent, to modify this general rule in some respects, the present case is clearly one for the application of the general rule. I accordingly recommend that the order in this case contain a provision to the effect that the electric company shall, at its own cost, make extensions to serve all persons desiring electric service in the city of San José and in the other incorporated cities in the San José district over which this Commission has jurisdiction in this respect. The rate in this case will be established on the theory that the service is community wide, and extensions which may be unprofitable in themselves will be taken care of in the rate so established."

Of course, there will be cases in which an extension at the utility's expense even within a municipality in which the utility

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has a general franchise would not be just or reasonable either to the utility or the existing consumers. Some of our California cities cover such vast areas of territory and others whose area is smaller nevertheless contain unsettled portions so far removed from the present more thickly populated districts that it cannot be expected that extensions must uniformly be made at the utility's expense. Again, as was said by Commissioner Edgerton in Clark v. Hermosa Beach Water Co. 2 Cal. R. C. R. 149, at page 152, referring to the effect of certain extensions on rates, "If a utility were operating in a valley and was providing water by gravity flow to people in the valley, and the utility were compelled to install a service at the top of a mountain, the expense of which installation and the cost of producing the service was twice the cost and expense on the rest of the system, manifestly, to charge this consumer on the top of the mountain the same rate as is charged in the valley would result in the necessity of tremendously increasing the rate in the valley in order to take care of the loss suffered in the service to the mountain top."

While other illustrations might be given to show that there are cases in municipalities in which it would not be reasonable to compel a utility, even though it holds a general franchise, to make extensions at its cost, it seems reasonable to hold as a general proposition that prima facie a utility whose franchise in a municipality is community wide is under the correlative duty of rendering community-wide service and of constructing at its expense the extensions necessary thereto. If in any case the utility considers it unreasonable to make the extension at its sole cost, the matter may be taken up informally with the Commission, or determined formally as provided by § 36 of the Public Utilities act.

The duty of gas and electric utilities to render service at their cost was heretofore limited by §§ 629 of the Civil Code of California to a distance of 100 feet from any main, or direct or primary wire, of the utility. However, this section has been repealed by § 86 of the revised Public Utilities act, effective August 8, 1915. It is a reasonable inference that the purpose of the repeal of this section was to leave this Commission free to prescribe reasonable rules and regulations, even though the re-

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sult might be the construction of extensions at the utility's sole cost, even beyond 100 feet.

I suggest the following rule as rule 15:

Rule 15. A water, gas, electric, or telephone utility which operates under a general franchise authorizing the occupancy of all the streets of a municipality shall make, at its own expense, such street extensions as may be necessary to serve applicants; provided, that in any case in which the construction of an extension at the utility's sole cost will in its opinion work an undue hardship upon the utility or its existing consumers, the matter may be submitted to the Commission as provided by § 36 of the Public Utilities act, unless satisfactorily adjusted by an informal application to the Commission.

[22, 23] *16. Extensions Outside of Municipalities.*—It is not feasible at this time to establish a general rule defining free limits for extensions outside of municipalities. The Commission naturally desires the utility to be as liberal as possible in the construction of extensions, but regard must also be had to the utility's financial condition and the rights of existing consumers. If the parties cannot agree, they may submit the matter informally to the Commission or formally as provided by § 36 of the Public Utilities act.

The Commission has frequently drawn attention to the fact that it is unreasonable for utilities to urge that each extension constructed at their cost must be profitable in itself. Such a policy would lead to grave results in thwarting the development of this state, and cannot be permitted by this Commission.

The Commission's attention has recently been drawn to a number of cases in which utilities which have a monopoly in certain territory have refused to make extensions in cases in which they would have made them had there been competition and under circumstances under which they actually do make extensions in other territory in which competition exists. If this attitude persists, it will become the matter of very serious consideration from the Commission. If a utility adopts such a policy in any part of the territory served by it, it must expect this fact to be taken into consideration if another utility of like kind asks authority to enter the territory under consideration or any other portion of the territory served by the existing utility.

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I suggest the following rule as rule 16:

Rule 16. A water, gas, electric, or telephone utility shall make such reasonable extensions in unincorporated territory at its own expense, as it can agree upon with the applicant for service; provided, that in any case in which the construction of an extension at the utility's sole expense will in its opinion work an undue hardship upon the utility or its existing consumers, the matter may be submitted to the Commission as provided by § 36 of the Public Utilities act, unless satisfactorily adjusted by an informal application to the Commission.

[24] *17. Ownership of Extensions.*—The utility should own all the facilities which it uses to serve the public. Endless difficulties and annoyances arise under any other rule. If an applicant for service makes payment in connection with an extension, this payment should be regarded as a loan, to be returned under reasonable conditions. The title to the extension should become vested in the utility.

It cannot be said that any one method of returning such loan is in itself the only reasonable rule. At times, such loans are returned piecemeal as additional services are installed; or piecemeal by crediting periodically stated portions of the consumer's bills; or in a lump sum when the entire periodic revenue from the extension totals a designated sum. The utilities should, in the first instance, adopt such rule or regulation as they consider reasonable under the general principle herein established, subject, of course, to review by this Commission.

I suggest the following rule as rule 17:

Rule 17. In any case in which an applicant makes a payment to secure the construction of an extension by a water, gas, electric, or telephone utility, such payment shall be considered as a loan to the utility, to be repaid under reasonable, nondiscriminatory rules and regulations. Interest shall be paid on such loans at the rate of 6 per cent per annum.

IV. *Modification of Rules.*

18. What Rules Are Intended to Establish.—Nothing in any of the foregoing rules should be construed as depriving the utility of the right to establish and enforce uniform, nondiscriminatory rules more favorable to their patrons than the rules

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herein authorized. These rules are intended to establish what the utility may demand, and not what it must require.

I submit the following rule as rule 18:

Rule 18. A water, gas, electric, or telephone utility may establish uniform, nondiscriminatory rules more favorable to its consumers than the rules herein established.

As with all general rules, cases will arise in which the application of some rule may, under the facts of some case or class of cases, work a hardship. In such event application may be made to the Commission for a modification of the rule.

It will hardly be necessary to direct that the utilities shall apply the foregoing rules without discrimination as to persons, and that their own rules adopted hereunder shall be nondiscriminatory. Likewise there should be no discrimination between localities, but different conditions in different localities may justify different rules and regulations on the part of the utility.

The Commission has heretofore rendered a large number of decisions dealing in individual cases with various phases of the general subject-matter of the present inquiry. The orders therein shall stand in so far as they are consistent with the rules herein established, but shall yield to the order herein in so far as inconsistent therewith.

The rules herein established shall take precedence over all rules and regulations filed or to be filed by water, gas, electric, and telephone utilities. Rules and regulations now on file, and inconsistent with the rules herein established, should be revised and refiled within sixty days after the effective date of the order herein.

In order to provide ample time for the printing of this decision and its transmission to all utilities affected, I recommend that it be made effective sixty days from date.

I submit the following form of order:

ORDER

Each water, gas, electric, and telephone utility doing business within this state having been served with notice of this proceeding, and opportunity having been accorded each such utility to appear and be heard, and evidence and argument having been received, and this case being now ready for decision,

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It is hereby ordered as follows:

1. The following rules and regulations are hereby found to be just and reasonable rules and regulations, and are hereby established as rules and regulations to be obeyed and followed by all water, gas, electric, and telephone utilities doing business within California:

I. *Service Charges.*

A. *Metered Service.*

Rule 1. A water, gas, electric, or telephone utility may, under uniform, nondiscriminatory rules and regulations, require that an applicant for metered or measured service establish his credit before service is delivered, unless a prepayment device makes such procedure unnecessary. The applicant's credit will be deemed established if he (1) owns the premises; or (2) makes a cash deposit; or (3) furnishes a guarantor for the payment of his bills, satisfactory to the utility; or (4) has paid all his bills to the utility promptly during the twelve months prior to the effective date of the order herein.

Rule 2. If an applicant for metered or measured service makes a cash deposit to insure payment for service to be delivered, the amount of the deposit shall be such as may be specified in the utility's rules, but in no event in excess of twice the average periodic bill of consumers of his class; provided that the deposit for domestic or residence monthly service of water, gas, electric, and telephone utilities shall not exceed $2.50.

Rule 3. If a consumer who has initially established his credit by showing that he is the owner of the premises, or by supplying a guarantor satisfactory to the utility, or by paying all his bills to the utility promptly during the twelve months prior to the effective date of the order herein, later fails to pay his bills, the utility may demand as guaranty for the payment of future bills a cash deposit in the amount provided by rule 2; provided that service may not be discontinued for failure to make such deposit until the time specified in rule 5 herein after notice of intention to discontinue service unless such demand is complied with.

Rule 4. If a consumer who has made a cash deposit fails to pay a bill for metered service, the utility may apply the deposit in so

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far as necessary to liquidate the bill, and may require that the deposit be restored to its original amount; provided that service may not be discontinued until the deposit has been fully absorbed, and in no event until the expiration of the respective periods of time after notice of intention so to do, as specified in rule 5 herein.

Rule 5. A water, gas, electric, or telephone utility may not, for failure to make a deposit, discontinue a metered service for which bills are normally made out monthly until the expiration of at least fifteen calendar days after written notice of intention so to do; nor where the bills are normally made out weekly until the expiration of at least four calendar days after written notice of intention so to do; nor where the bills are normally made out fortnightly until the expiration of at least seven calendar days after written notice of intention so to do; nor where the bills are normally made out for periods in excess of one month, until the expiration of at least thirty calendar days after written notice of intention so to do.

Rule 6. A water, gas, electric, or telephone utility may not discontinue service by reason of nonpayment of bills for metered or measured service theretofore delivered.

Rule 7. A telephone utility may, under uniform, nondiscriminatory rules and regulations, extend the convenience of sending telegrams and long-distance telephone messages on credit to all its patrons or to the extent of such deposits as any of its patrons desire to make.

B. *Unmetered Service.*

Rule 8. A water, gas, electric, or telephone utility delivering unmetered service at flat rates may, under uniform, nondiscriminatory rules and regulations, require payment in advance of delivery, for a period not to exceed that for which bills are regularly rendered as specified in the rate schedule, but may not demand guaranties to secure payment for service to be rendered in the future.

Rule 9. A water, gas, electric, or telephone utility may not for failure to pay for service, discontinue an unmetered service for which bills are normally made out monthly until the expiration of at least fifteen calendar days after written notice of intention

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so to do; nor where the bills are normally made out weekly until the expiration of at least four calendar days after written notice of intention so to do; nor where the bills are normally made out fortnightly until the expiration of at least seven calendar days after written notice of intention so to do; nor where the bills are normally made out for periods in excess of one month, until the expiration of at least thirty calendar days after written notice of intention so to do.

C. *Return of Deposits.*

Rule 10. After a cash deposit to guarantee payment for metered or measured service has stood unimpaired for twelve months, it shall be returned to the depositor. Upon closing any account, the balance of any deposit remaining after the closing bill for service has been settled shall be returned promptly to the depositor.

Rule 11. Interest at the rate of 6 per cent per annum must be paid by each water, gas, electric, or telephone utility on all deposits held by it to secure the payment of bills for metered service; provided, that interest need not be paid if the service is discontinued within less than twelve months from the date of first taking service.

D. *Contracts.*

Rule 12. Except in the case of extensions in unincorporated territory, which matter is left open for consideration in subsequent proceedings, and of extensions in incorporated territory in cases in which the Commission may hereafter authorize the signing of contracts for service, a water, gas, electric, or telephone utility may not require that an applicant sign a contract for service as a condition precedent to service; provided, that such utility may require that reasonable written application for service be made.

II. *Service Connections.*

Rule. 13. A water, gas, electric, or telephone utility which operates upon, under, or along any public street, highway, alley, lane, or road shall at its own expense install a service connection of normal size to the property line or curb line of property abut-

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ting upon said public street, highway, alley, lane, or road, or to such point on the consumer's premises as the utility may agree upon. The term "service connection," as herein used, shall include water and gas pipes, electric and telephone wires, water, gas, and electric meters, electric transformers, gas regulators, telephone instruments, and appurtenances. Subject to review by the Railroad Commission, a water, gas, electric, or telephone utility may refuse to make a service connection if it believes that the service will not be used in the reasonably immediate future.

Rule 14. Under reasonable, nondiscriminatory rules and regulations, to be prepared in the first instance by the utility, subject to review by the Railroad Commission, a water, gas, electric, or telephone utility may provide that the cost of disconnecting and reconnecting service connections may be (1) charged directly to the new or the resuming consumer; or (2) distributed over the periodic payments over a reasonable period of time; or (3) merged in the general operating expenses. The so-called "cancelation charges" of water, gas, electric, and telephone utilities are hereby abolished.

III. *Extensions.*

Rule 15. A water, gas, electric, or telephone utility which operates under a general franchise authorizing the occupancy of all the streets of a municipality, shall make, at its own expense, such street extensions as may be necessary to serve applicants; provided that in any case in which the construction of an extension at the utility's sole cost will, in its opinion, work an undue hardship upon the utility or its existing consumers, the matter may be submitted to the Commission as provided by § 36 of the Public Utilities act, unless satisfactorily adjusted by an informal application to the Commission.

Rule 16. A water, gas, electric, or telephone utility shall make such reasonable extensions in unincorporated territory at its own expense, as it can agree upon with the applicant for service; provided that in any case in which the construction of an extension at the utility's sole expense will in its opinion work an undue hardship upon the utility or its existing consumers, the matter may be submitted to the Commission as provided by § 36 of the

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Rates — Natural gas — Maintenance of standard.

6. Rates established by the Kansas Commission to be paid a producing natural gas company were predicated on the maintenance of the quality of gas supplied at substantially the same standard theretofore maintained by the company, since a rate fixed for gas of a certain quality might be too high if the standard were materially reduced.

Rates — Natural gas — Value of service to consumer.

7. A higher rate should not be charged for natural gas used for cooking and lighting than that used for other purposes on the theory that it is worth proportionately very much more per unit for cooking and lighting purposes than for heating, since the value of the service to the consumer, taking into consideration the use to which it is applied, is not a proper basis of rate making.

Rates — Natural gas — Value of service to consumer — Gas engines.

8. A higher rate cannot be charged for natural gas used in the operation of gas engines merely on the theory of the value of the service to the consumer.

Rates — Natural gas — Time and condition of delivery as factors determining.

9. Gas used for industrial fuel may be supplied at a lower rate than that charged for gas used for other purposes, where delivered at a time when the minimum load is being carried, when it can be transported without interference with other business, and when the carrying system would otherwise be partly idle, time and condition of delivery furnishing a sound and proper basis for classification of the service.

Constitutional law — Impairment of contract — Free service ordinances — Power of Commission — Discrimination.

10. Franchise ordinances requiring gas companies to furnish service free to cities in consideration for use of the streets do not interfere with the power of a Public Service Commission to fix proper rates therefor, since such ordinances are not contracts protected against impairment by the provisions of § 10 of the Federal Constitution.

Discrimination — Gas — Free service — Ordinance requirements.

11. The furnishing of "free gas" to cities in consideration for the use of streets in compliance with terms of ordinances is a species of patent discrimination against those consumers who are required to pay scheduled prices, and it should, therefore, be promptly discontinued.

Rates — Minimum charge — Natural gas.

12. An equitable minimum monthly charge should be provided for in fixing a natural gas rate schedule on the ground of the company's preparedness and readiness to serve.

Rates — Natural gas — Amount of minimum charge.

13. A uniform minimum monthly charge of 50 cents was fixed as the amount which should be paid throughout the territory served by natural gas companies, and collections on account of such charge were ordered retained in full by the distributing companies.

Return — Natural gas companies — Amortization.

14. In determining the amount of revenue necessary for natural gas companies in a rate-making proceeding, the Kansas Commission con-

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sidered that the actual bona fide investment in the company's property should be protected, and that the payment of the indebtedness should, if reasonably possible, be provided for from the earnings of the property and from its salvage value at the end of a six-year period, it being possible to make only a rude approximation of the amortization period on account of the speculative character of the business.

Return — Natural gas companies — Margin for unexpected outlays.

15. Rates for natural gas should be fixed so as to provide a reasonable margin of return for unexpected outlays liable to occur in conducting so hazardous an enterprise, and, since the public is vitally interested in the continuation of the service, no unreasonable restriction should hamper the companies in reaching a new source of supply and serving the public as long and as well as practicable.

[July 16, 1915.]

PROCEEDINGS to determine the reasonableness of natural gas rates. The complainants were the receivers for the Kansas Natural Gas Company, the defendants were the cities of Lawrence, Topeka, Kansas City, Leavenworth, Atchison, Oakland, Merriam, Olathe, Edgerton, Le Loup, Princeton, Welda, Fort Scott, Parsons, Pittsburg, Weir, Columbus, Altamont, Coffeyville, Mound City, Elk City, Tonganoxie, Baldwin, Rosedale, Lenexa, Gardner, Wellsville, Ottawa, Richmond, Colony, Thayer, Galena, Cherokee, Scammon, Oswego, Liberty, Caney, Mound Valley, Independence, and Redfield; the Lawrence Citizens Light & Power Company, the Consumers Light, Heat, & Power Company, L. C. Treleaven, receiver of the Consumers Light, Heat, & Power Company, the Wyandotte County Gas Company, Willard J. Breidenthal and John F. Overfield, receivers for the Wyandotte County Gas Company, the Leavenworth Light, Heat, & Power Company, the Atchison Railway, Light, & Power Company, the Home Light, Heat, & Power Company, the Kansas Gas & Electric Company, the O. A. Evans & Company, the Tonganoxie Gas & Electric Company, Central Gas Company, the Coffeyville Gas & Fuel Company, the Union Gas & Traction Company, the Weir Gas Company, the Ottawa Gas & Electric Company, the Elk City Gas & Oil Company, the Parsons Natural Gas Company, the American Gas Company, the Fort Scott Gas Company, the Olathe Gas Company, the Liberty Gas Company, Fort Scott & Nevada Light, Heat, Water, & Power Company, the Central Gas Company, Gunn Pipe Line Company, the Moran Gas Company, the Kansas Farmers Gas Company. The Commission found that

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a horizontal increase of 3 cents per thousand cubic feet effective in all markets where such increase could properly be made would produce revenue sufficient to enable complainants to protect their investment and provide for the amortization of indebtedness within a six-year period. It appeared that more than half of the gas supplied and marketed by complainants is sold in the state of Missouri; and complainants not desiring any advance in Kansas except as it might be simultaneous with a corresponding one in Missouri, the Commission withheld action pending action of the rate-regulating body or bodies of Missouri having jurisdiction of the subject-matter.

Appearances: T. S. Salathiel for complainants; Thomas Harley for the city of Lawrence; R. J. Higgins for the city of Kansas City, Kan.; George P. Hayden for the city of Topeka; Walter E. Brown for the city of Atchison; C. O. Pingry for the city of Pittsburg; L. C. Coxey and S. R. Johnson for the city of Columbus; A. S. Ecksom for the city of Coffeyville; F. M. Harris for the city of Ottawa; Nelson Case for the city of Oswego; C. J. Dodds for the Lawrence Citizens Light, Heat, & Power Company; L. C. Trelevan, receiver, and Ferry, Doran, & Dean, attorneys, for the Consumers Light, Heat, & Power Company; Blair, Magaw, & Lillard for the bondholders of the Consumers Light, Heat, & Power Company; J. W. Dana, attorney, and Willard J. Breidenthal and John F. Overfield, receivers, for the Wyandotte County Gas Company; Floyd E. Harper for the Leavenworth Light, Heat, & Power Company; J. M. Challis for the Atchison Railway, Light, & Power Company; R. L. McCune for the Kansas Gas & Electric Company, and the Home Light, Heat, & Power Company; L. W. Young, Jr., for the O. A. Evans & Company; W. H. Shepard and W. E. Ziegler, for the Coffeyville Gas & Fuel Company; C. H. Pattison for the Union Gas & Traction Company; C. M. Otis for the Weir Gas Company; C. H. Pattison for the Ottawa Gas & Electric Company; C. M. Oakes for the Parsons Natural Gas Company; E. E. Sapp for the American Gas Company; Edward C. Gates for the Fort Scott Gas & Electric Company; W. F. Guthrie for the Olathe Gas Company; Homer M. Poage for the Fort Scott & Nevada Light, Heat, Water, & Power Company; C. H. Pattison for the Kansas Farmers Gas Company.

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Foley, Commissioner: Some time in or prior to 1904 the Kansas Natural Gas Company was incorporated under the laws of the state of Delaware. Those instrumental in its organization had about that time acquired an interest in or control of certain gas leases in southeastern Kansas, some of which had been prospected or partially developed. The capital stock of the Company was originally fixed at $6,000,000. No consideration appears to have been paid for the stock, except the leases of which we have spoken, which were, of course, almost purely speculative in value.

Soon afterward another group of leases of the same character was acquired. The capital stock was increased to $12,000,000, but no consideration appears to have been paid for any of this stock except the last acquired gas properties.

Almost contemporaneously with the acquisition of these properties the company issued its first-mortgage bonds, dated May 1, 1904, in the sum of $4,000,000. This issue of bonds was sold at par for cash, and $900,000 of the proceeds were used to pay for the gas properties which constituted the basis for the issue of the company's stock. Just how the details of this transaction were carried on does not clearly appear from the evidence, but it would seem, and, indeed, it is almost conceded that this sum of $900,000 was full value for all of the speculative properties constituting the original capital investment of the organization. The capital stock, therefore, does not represent any actual investment in the property; but all such investment is represented by the bonded indebtedness of this and auxiliary companies, so far as such indebtedness is yet outstanding and unpaid.

With the remaining proceeds of the sale of its first-mortgage bonds the company began the construction of a pipe line for the purpose of transporting gas to market. Its gas fields were located principally, if not wholly, in Allen, Woodson, and Neosho counties, and in order to obtain a market for its product it was necessary to take the gas to cities 100 to 150 miles distant, notably, Kansas City, Missouri, Kansas City, Kansas, Topeka, and other cities in northeastern Kansas. Lines were built from Ottawa north to serve Lawrence, Topeka, Leavenworth, Atchison, and other points.

Toward the end of 1905 it was found that the funds realized

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from the original bond issue would not be sufficient to construct the lines necessary to convey the company's product to market, and an additional bond issue of $4,000,000 was authorized. These bonds were dated January 1, 1906, and were sold at 75 per cent of their face value, approximately $3,000,000 being realized from this issue, and the proceeds used in the development of the company's pipe lines.

About this time it became apparent that more funds were necessary in order to complete the pipe-line system. The gas supply upon which the company had originally relied was rapidly diminishing, and it became necessary to project the pipe line farther south into the more prolific fields of Montgomery county.

The Kansas Natural Gas Company, as a separate legal entity, had now apparently reached the limit of its financial resources and credit. Under the conditions of the mortgages which it had theretofore executed, their liens extended to any subsequently acquired property of the company, and therefore new capital for the extension of the lines could not be obtained on the company's credit. Under these circumstances an auxiliary company known as the Kansas City Pipe Line Company was organized and incorporated with a capital stock of $4,500,000, and an issue of $4,745,000 of first-mortgage bonds was authorized and placed on the market by this company, under date of February 1, 1906. These bonds were sold for cash at about 92.8 per cent, and the proceeds used in the construction of a pipe line connecting with that of the Kansas Natural Gas Company.

The Kansas Natural Gas Company continued to conduct its business of procuring, purchasing, transporting, and selling gas; but in 1909, owing to the constantly diminishing gas supply in Kansas, it became evident that it would be necessary to project the pipe line farther south into the newer Oklahoma fields in order to obtain a sufficient supply to furnish the market depending on the Kansas Natural for its gas.

A further auxiliary company, the Marnett Mining Company, was then organized and incorporated with a capital stock of $2,500,000. This company, on December 1, 1909, issued $965,000 first-mortgage bonds. A small amount of the money realized from the sale of those bonds was used to pay for some gas properties in Oklahoma, but nearly all of the proceeds were used in the

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construction of a pipe line into that state. This line was a substantial prolongation of the lines of the Kansas Natural Gas Company and the Kansas City Pipe Line Company in Kansas and Missouri, and the lines of the three companies constituted one connected and continuous system.

While stock of those three companies was issued in large amounts, yet the actual investment in the physical property of the company appears to have been entirely derived from the sale of the bonds of the Kansas Natural Gas Company and its two auxiliary companies, and the stock represented nothing in the way of capital investment.

Some portions of the company's pipe lines were moved from one point to another, as conditions appeared to demand; so that at present the portions of the connected line now owned by the respective corporations, as detailed by the evidence are:

The Kansas Natural Gas Company owns a 16-inch pipe line from Ottawa north to St. Joseph, Missouri, including a 12-inch branch to Topeka, a 10-inch branch to Leavenworth, a similar branch to Atchison, and an 8-inch branch to Lawrence; also a 16-inch line from Petrolia, near Chanute, by way of Ottawa to Olathe; a 12-inch line for about 15 miles into the gas field south of Petrolia; a 16-inch line from Independence into the Joplin district, and a short line from its compressor station at Grabham, near Independence, south to the Oklahoma border.

The Kansas City Pipe Line Company owns a 16-inch line from Grabham station to Kansas City, also another 16-inch line from Grabham to Petrolia, and about 17 miles of 16-inch line in Oklahoma.

The Marnett Mining Company owns the pipe lines of the system in the state of Oklahoma, except the 17 miles owned by the Kansas City Pipe Line Company.

The Kansas Natural Gas Company continued to carry on its business in the usual manner until 1912, when it became involved in legal and, subsequently, in financial difficulties. Early in that year, Justice Dawson, then attorney general of the state, instituted an action in the district court of Montgomery county, Kansas, alleging, in substance, that the company constituted a monopoly, that it was violating the statutes of the state, and asking that it be ousted as an industrial outlaw.

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During the pendency of this action, and on October 9, 1912, a suit was filed in the district court of the United States asking for the appointment of receivers for the Kansas Natural Gas Company, on account of default in the payment of certain of its mortgage obligations. Receivers were appointed, who took charge of the business and property of the company. Those receivers reported to the Federal court that an increase of the gas rates to its consumers was necessary, and that court made an order directing the receivers to supply no gas to consumers except at a specified rate, much higher than the then existing rate.

Early in January, 1913, Justice Marshall, then attorney for this Commission, filed a complaint with the Commission, bringing in, as respondents, the Kansas Natural Gas Company, its receivers, the distributing companies who were acting for the Kansas Natural Gas Company in the distribution of its product, and the cities served by them. During the pendency of this proceeding the order of the Federal court increasing the price of gas to consumers appears to have been suspended.

While the investigation of this matter was pending before the Commission, and on February 15, 1913, the district court of Montgomery county "found that the gas company had violated the anti-trust laws of the state of Kansas and had forfeited its charter and right to do business, and entered a judgment of limited ouster, at the same time appointing receivers for the Kansas Natural Gas Company."

After the filing of the complaint by Mr. Marshall, the Federal receivers filed their application with the Commission, and several of the distributing companies filed separate applications, all asking for an increase in the rates for gas. The investigation by this Commission was exceedingly thorough and exhaustive, and resulted in a decision and order of the Commission denying the application for an increase in rates, and establishing the rates to consumers as theretofore in effect.

While these proceedings were being carried on before this Commission a conflict of jurisdiction was waged between the Federal and the state courts, and their respective receivers, for control of the property belonging to the Kansas Natural Gas Company and its auxiliaries. It is unnecessary to go into this matter in detail. Each court had appointed receivers. The complainants, receivers

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appointed by the district court of Montgomery county, finally triumphed and were placed in possession and control of the property situated in Kansas, on January 1, 1914; but it was not until September 22, 1914, that they obtained complete control of the entire property of the Kansas Natural Gas Company in the states of Kansas, Missouri, and Oklahoma.

In December, 1914, the various interests involved in the results of the prolonged litigation held a meeting at Independence, with a view of adjusting the controversies between the state of Kansas and the stockholders and creditors of the Kansas Natural and its auxiliary companies, and with a view of establishing the amount of the bona fide indebtedness of the Kansas Natural Gas Company and its auxiliaries, and of providing a means for its ultimate liquidation.

From the time of their respective issues until December, 1914, payments had been made upon the indebtedness represented by the various bond issues, until at that time the face value of the outstanding bonds was as follows:

Kansas Natural Gas Company, first-mortgage bonds	$1,600,000
Kansas City Pipe Line Company, first-mortgage bonds	2,545,000
Marnett Mining Company, first-mortgage bonds	547,000
Kansas Natural Gas Company, second-mortgage bonds	2,267,000
Total	$6,959,000

It is unnecessary to undertake to give in detail the provisions of this creditors' agreement, at which were represented the state of Kansas, by its attorney general, a large majority of the holders of the Kansas Natural Gas Company's first-mortgage bonds, a majority of the holders of the Kansas Natural Gas Company's second-mortgage bonds, the Kansas City Pipe Line Company, the Kansas Natural Gas Company, the receivers of the Kansas Natural Gas Company, and the Marnett Mining Company, and the holders of the Kansas City Pipe Line Company's bonds.

In discussing several of the phases of the matter before us we will have occasion to refer to some of the provisions of this creditors' agreement, which was approved by the court and made a part of the record in the ouster proceedings. By its terms the face value of the Kansas Natural Gas Company's second-mortgage bonds and of the Kansas City Pipe Line Company's bonds was reduced to what was agreed upon as their actual cash value, based

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upon the money invested in them, with 6 per cent interest thereon, and by giving credit for payments made thereon and dividends upon stock which represented no investment, with interest upon such payments. By reason of these reductions the bond accounts stood, under the terms of the creditors' agreement, on January 1, 1915, as follows:

Kansas Natural Gas Company's first-mortgage bonds	$1,600,000.00
Kansas City Pipe Line Company's first-mortgage bonds	1,746,450.43
Marnett Mining Company's first-mortgage bonds	547,000.00
Kansas Natural Gas Company's second-mortgage bonds	1,700,250.00
Total	$5,593,700.43

During the pendency of the litigation in the Federal and state courts, collections had been made, principally by the Federal receivers, for gas sold, and the resulting funds were, at the conclusion of the litigation, turned over to the state receivers, complainants in this proceeding. The creditors' agreement provided for the application of those funds (after the payment of certain accrued interest and some charges and expenses) upon the bonds in certain proportions. By reason of those payments, and other payments made since January 1, 1915, the bonded indebtedness has been reduced so that on May 15, 1915, it stood as follows:

Kansas Natural Gas Company's first-mortgage bonds	$654,400
Kansas City Pipe Line Company's first-mortgage bonds	907,000
Marnett Mining Company's first-mortgage bonds	468,000
Kansas Natural Gas Company's second-mortgage bonds	1,700,250
Total	$3,729,650

This sum, as we understand it, now represents the actual investment in the property.

Owing to the closely interlocked relations of the Kansas Natural Gas Company with its auxiliary corporations, and to the provisions made in the creditors' agreement for the consolidation of the assets of the three companies upon liquidation of the debts, the system and its needs and responsibilities will be considered as a unit.

On April 9, 1915, the complainants, John M. Landon and R. S. Litchfield, receivers for the Kansas Natural Gas Company, filed before the Commission their complaint, alleging, in substance, that on February 15, 1913, they were duly appointed receivers by the district court of Montgomery county; that they

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are the duly qualified and acting receivers for the company, and that they filed the complaint by and with the consent of the court of their appointment; that the respondent cities are each municipal corporations, organized under the laws of the state of Kansas, and that the various distributing companies, respondents above named, are public-service corporations, authorized to do business in Kansas and engaged in supplying natural gas to the respective cities in the complaint named. They allege that Willard J. Breidenthal and John F. Overfield are receivers for the Wyandotte County Gas Company, supplying gas to the citizens of Kansas City and Rosedale, in Wyandotte county, Kansas; and that N. G. Treleaven is the duly appointed, qualified, and acting receiver for the Consumers Light, Heat, & Power Company, supplying gas and other commodities to the cities of Topeka and Oakland, Kansas.

Complainants further allege that on January 1, 1914, pursuant to a decree of the district court of the United States for the district of Kansas, the receivers theretofore appointed by that court delivered the possession of all of the property of the Kansas Natural Gas Company to the complainants, as receivers appointed by the district court of Montgomery county, Kansas; that complainants have been carrying on, since said date, the business of the corporation, and have been producing, purchasing, transporting, distributing, and selling natural gas to the respondents and the citizens of Kansas and Missouri.

It is further alleged that that portion of respondents named as public-service corporations have been respectively engaged in the business of distributing and selling natural gas to the inhabitants of their respective localities, under contracts theretofore existing between such respondents and the Kansas Natural Gas Company, and that each of the contracts with the said respondents contained a clause substantially as follows:

"Second party [the distributing company] agrees to pay the gas company, at its general office wherever the same may be located, on or before the 15th day of each and every month during the continuance of this contract, a sum of money equal to 66⅔ per cent of its gross sales of natural gas during the preceding month, for both manufacturing and domestic purposes, less the amounts of uncollectible bills, when the delinquent party has been

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shut off for default in payment thereof, within fifteen days after the maturity of such bill or bills, and all reasonable efforts have been made to collect such bills without success."

The complaint further states that, by reason of the provisions above quoted, and other stipulations in said contracts provided, the respondent distributing companies, and each of them, have wilfully and negligently permitted their distributing systems to deteriorate and lapse into bad repair, the lines and equipment to become leaky and wasteful in the distribution of natural gas; that by reason thereof great loss results to complainants, far in excess of what should be reasonably allowed; that the efficiency of the service has been thereby affected; that the said respondents fail, neglect, and refuse to repair their distributing plants, and wilfully and negligently permit such excessive leakage and waste of gas through their respective plants; that the said contracts should be modified or canceled; that a method of compensation and remuneration of the distributing companies and complainants should be fixed and determined that will stop such negligent and wasteful methods in the distribution of natural gas.

The complaint further alleges that the rates at which gas was and is being sold to consumers are noncompensatory and unremunerative; that during the year 1914 complainants have operated the business of the Kansas Natural Gas Company at a loss of about $1,300,000; that in order to procure a sufficient supply of natural gas for the continuation of the business, it will be necessary to make extensions of mains and of feed lines to new gas fields and to new wells; that to meet the requirements for necessary extensions, complainants will be compelled to expend during the year 1915 about $600,000, and thereafter annually about $200,000, and will be compelled to transport the gas supplied to distributing companies in Kansas an additional distance of from 25 to 60 miles, in order to get such gas to the points of consumption; that at the present rate at which gas is being sold to consumers in the state of Kansas they will be unable to continue the business of producing, purchasing, transporting, distributing, and selling natural gas, will be unable to make the necessary extensions of pipe lines and feed lines to new fields and new territory, and will be unable to furnish a supply of gas for the winter of 1915-'16, or for future years; that the price at which gas shall be

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sold to consumers at various points in the state of Kansas should be fixed at a remunerative and compensatory rate.

The complaint concludes with a prayer, in substance, that a rate be fixed at which natural gas shall be supplied to consumers by the respondent distributing companies and complainants, and requiring the distributing companies to improve and repair their respective distributing plants and systems, and that the gas to be supplied by complainants to the distributing companies be measured at the gates to their respective plants, on such terms and under such conditions and at such rates as to the Commission may seem just and proper.

It will be observed that in this complaint no specific rate or rates at any point of distribution are requested by complainants. The substance of the prayer is that rates compensatory and remunerative be established and made effective.

On April 26, 1915, however, there was filed with the Commission a document which may be regarded as an amendment to the complaint, in which the Commission was requested to establish and make effective a schedule of rates to be collected from the distributing companies for natural gas delivered at the gate of each plant. This schedule of rates was constructed upon the distance plan, and varied from 13½ cents per thousand cubic feet for gas delivered at Coffeyville, on the Oklahoma border, to 29 cents per thousand cubic feet for gas delivered at Atchison. As, however, this schedule was subsequently abandoned and superseded by another, no further attention need be given it.

On May 14, 1915, and after the commencement of the hearing before the Commission in this matter, the complainants, having first obtained leave, filed an amendment to their complaint requesting the Commission to establish a schedule of joint rates for the distribution and sale of gas by complainants and respondent distributing companies. Under the provisions of this schedule it was proposed to increase the joint rates at all points except Independence and Coffeyville, so that the consumers' rate would be increased gradually at the various points between Coffeyville and Atchison, the proposed rate at Coffeyville being 20 cents per thousand cubic feet and at Atchison 45 cents per thousand cubic feet. This proposed schedule, with changes in rules and practices, being the one upon which the hearing was had, is as follows:

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City.	Company.	Present Joint Rate.	Changed Joint Rate.	Present Minimum Bill.	Changed Minimum Bill.
Independence	Kansas Natural Gas Co.	20	20	20	40
Elk City	Elk City Oil and Gas Co.	25	25	20	50
Coffeyville	Coffeyville Gas & Fuel Co.	20	20	20	40
Liberty	Liberty Gas Co.	25	25	..	50
Altamont	American Gas Co.	25	30	..	60
Oswego	American Gas Co.	25	30	..	60
Columbus	American Gas Co.	25	30	..	60
Scammon	American Gas Co.	25	30	..	60
Weir City	Weir City Gas Co.	25	30	50	60
Galena and Empire	American Gas Co.	25	30	..	60
Cherokee	American Gas Co.	25	30	..	60
Pittsburg	Home Light, Heat, Water, & Power Co.	25	30	..	60
Parsons	Parsons Gas Co.	25	30	..	60
Thayer	O. A. Evans & Co. (Thayer Gas Plant)	25	30	..	60
Colony	Union Gas & Traction Co	25	35	..	70
Welda	Union Gas & Traction Co	25	35	..	70
Richmond	Union Gas & Traction Co	25	35	..	70
Princeton	Union Gas & Traction Co	25	35	..	70
Ottawa	Ottawa Gas & Electric Co.	25	35	..	70
Baldwin	Union Gas & Traction Co.	25	37	..	74
Lawrence	Citizens Light, Heat, & Power Co.	25	37	..	74
Topeka	Consumers Light, Heat, & Power Co.	25	37	..	74
Tonganoxie	Tonganoxie Gas & Electric Co.	25	37	..	74
Leavenworth	Leavenworth Light, Heat, & Power Co.	25	40	..	80
Atchison	Atchison Rly., Light & Power Co.	25	45	..	90
Wellsville and Le Loup	Union Gas & Traction Co.	25	37	..	74
Edgerton	Union Gas & Traction Co.	25	37	..	74
Gardner	Union Gas & Traction Co.	25	37	50	74
Lenexa	Union Gas & Traction Co.	25	37	..	74
Merriam and Shawnee	Union Gas & Traction Co.	25	37	..	74
Kansas City	Wyandotte Co. Gas Co.	25	37	50	74
Olathe	Olathe Gas Co.	25	37	..	74

Service for Fort Scott, Moran, and Bronson, Kan., will be discontinued except delivery of gas at the gate of the pipe line of the Fort Scott and Nevada Water, Light, Heat, and Power Company. Pipe Line (called Gunn Pipe Line) at or near Carlyle, Kansas, at the flat rate of 18 cents per M. feet.

Two cents per thousand cubic feet will be added to the bills but shall be deducted from the bills of all consumers who pay their bills on or before the 10th day of the succeeding month in which the service is rendered.

Changed Rules and Practices.

(1) All gas supplied by the receivers will be measured at the gates of the distributing company's plants, and the distributer will be charged with and required to account and pay for all gas delivered, less 12½ per cent allowed as a maximum normal leakage, at the scheduled rate, until December 31, 1915, and 10 per cent thereafter.

(2) The distributer shall receive and retain all benefits from minimum bills and forfeited discounts, and shall stand loss of bad accounts.

To the complaint, answers were filed by the Atchison Railway, Light, & Power Company, the Fort Scott & Nevada Light, Heat, Water, & Power Company, the Fort Scott Gas & Electric Company, the Wyandotte County Gas Company, the Parsons Natural Gas Company, the O. A. Evans & Company (the Thayer Distributing Company), the receiver of the Consumers Light, Heat, & Power Company, of Topeka, all of whom are distributing companies and occupy substantially similar situations in relation to the complainants, and all of whose answers are of a substantially similar character, and need

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not be considered in detail. In addition to those formal answers, the Wyandotte County Gas Company filed a conditional consent to the schedule of joint rates above set out. The Union Gas & Traction Company, which supplies natural gas to Baldwin, Ottawa, and a number of towns in that portion of the state, filed an informal statement, which will be considered as an answer. The city of Oswego filed a copy of an ordinance authorizing M. M. Sweetman, his successors and assigns, to operate and maintain gas works in that city; and the Spaulding Quarry Company, which uses gas in the operation of gas engines, under a contract with the Atchison Railway, Light, & Power Company, also filed an informal answer, with a copy of its contract. The cities of Lawrence and Kansas City, Kansas, each filed an answer. Appearances on the hearing were made by several of the other respondents, but formal answers were not filed.

In considering special questions touching the relation to complainants of the Fort Scott & Nevada Light, Heat, Water, & Power Company, the Fort Scott Gas & Electric Company and the receiver of the Consumers Light, Heat, & Power Company, it will be hereafter necessary to consider at slightly greater length the pleadings of these respondents, respectively; but in this connection it is sufficient to state, in a general manner, that all of the distributing companies admit the necessity for an increase in the revenues of complainants; that some of them question whether or not any substantial increase in rates will result in an increase of revenues to the Kansas Natural Gas Company; and that all, either in their pleadings or upon the hearing, assert that an increase of rates to the extent proposed by complainants would result in impairment if not in an almost total destruction of the revenues of both complainants and the distributing companies.

The answers filed by the two cities deny, substantially, the allegations of the complaint, and aver that no increase of natural-gas rates to consumers is necessary.

[1] On behalf of all respondents who were not represented at the hearing, or who did not file formal answers, the Commission has considered every material allegation of the complaint denied. The law casts upon the complainants the burden of proving the reasonable necessity for any increase in rates, and that rule in

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and of itself operates in behalf of each respondent as a plea in denial.

Upon the issues raised by these pleadings, respectively, a hearing was had, testimony introduced, oral arguments were made, memorandum briefs were submitted to the Commission, and the matter was taken under advisement.

Considered in its entirety, the problem presented to the Commission is exceedingly complex. The interests represented are varied, and, as not infrequently happens, appear to be inharmonious, if not irreconcilable. Aside from the apparent necessity and the demands of the complainants, who are trustees for the creditors of the Kansas Natural Gas Company, there are at least two general classes of interests to be recognized; and, so far as is consistent with the rights of the other and of complainants, each should be considered and protected.

The company produces from its own wells a part of the gas used by its customers, but by far the greater portion of that which it supplies is purchased. It transports both that which it produces and that purchased, through its pipe lines, to the boundaries of the cities supplied, where the gas is usually delivered to a local distributing company. These local companies constitute one general class, interested in the controversy, of whose existence and claims the Commission must take cognizance. They differ from each other greatly in amount of investment and in comparative efficiency, but all serve the same common purpose of receiving the gas from complainants at the boundaries of the cities to be supplied, and each, through its own plant or lines, distributing it to the consumer, the public. Nearly all urge partial compliance with the petition of complainants, but they differ much in their views regarding the character and extent of the relief which should be granted.

The gas consumed in Kansas is used mostly for household purposes,—for cooking, lighting, and heating. A comparatively small proportion is used for industrial purposes. The consumers, domestic and industrial, constitute the second general class whose interest in the proper solution of the problem before us is manifest.

[2] Superficially, the interests of complainants and of the distributing companies and the public may seem to clash, but

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fundamentally the most enduring interests of each party are the common interests of all. It is very far from being of any advantage to that portion of the public who wish to use so clean and desirable a fuel as gas to fix the retail price to the consumer so low as to prevent that extension of complainants' lines, which appears to be necessary to enable it to replenish its diminishing supply, and to efficiently perform its proper function of public service. On the other hand, it is equally subversive of the interests of all parties to raise the price of gas to the consumer so high as to practically prohibit its sale, or at least diminish, under the conditions at which such rate would be applied, the revenues received under existing rates. This would, indeed, be "killing the goose that lays the golden egg." A rate to consumers should, if possible, be fixed which would provide for complainants the amount of revenue reasonably necessary to meet its needs, and which would not be so high as to discourage or diminish the use of natural gas as a fuel. The public has a right to enjoy the use of this natural product, which is both a necessity and a luxury, at as reasonable a rate as it can be supplied, taking into consideration all the surrounding conditions and circumstances, economic as well as financial.

When, however, it is remembered that no less than thirty-five cities in Kansas are served by complainants; that about twenty-four local companies distribute the gas from separate plants in and through these several cities; that diverse conditions obtain in every locality; that each place varies more or less from all others in distance from the source of supply; that a failure to pay the interest and annual instalments upon the bonded debt of the company may result in a foreclosure of the mortgage and the sale and possible junking of its property; that much of the evidence submitted was expert or semiexpert in character; that the rates to be established, if any change is made, must be tentative and experimental; that it is usually impracticable to establish anything in the nature of a general system intended to cover a multitude of somewhat dissimilar circumstances, which will operate with exact fairness to all concerned, the conviction is almost irresistible that a general schedule of rates to consumers, established under such limitations, must be at best only a reason-

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able approximation to justice. No ideal system or schedule can be formulated or applied under such conditions.

[3] Incidental to a determination of the main question presented to the Commission, it becomes necessary to consider several collateral matters of considerable, if not of vital, importance. One of these is presented by an exception set forth in the schedule of joint rates requested by complainant, to be applied to future consumption of gas, and filed as an amendment to the complaint. The exception affects prices to distributing companies serving Moran, Bronson, and Fort Scott, and necessarily affects prices to consumers in those cities.

In the schedule of rates referred to occurs the following paragraph:

"The service for Fort Scott, Moran, and Bronson, Kansas, will be discontinued except delivery of gas at the gate of the pipe line of the Fort Scott & Nevada Light, Heat, Water, & Power Company (called Gunn Pipe Line), at or near Carlyle, Kansas, at the flat rate of 18 cents per thousand feet."

The effect of this, if allowed by the Commission, would be to place the consumers of gas in those cities upon an entirely different basis from those of other cities served by the complainants and their distributing agencies. The Fort Scott Gas & Electric Company, which is the distributing company and agency of the complainants in the city of Fort Scott, protests vehemently against the adoption of the system of charging a flat rate for gas delivered at Carlyle, and urges that it is a manifest discrimination against the consumers of that city, as well as of those at Moran and Bronson. Those cities are not located upon or near the main pipe line of the Kansas Natural Gas Company.

Several years ago there was built from Carlyle, in Allen county, through or near Moran and Bronson, to Fort Scott, and subsequently to Nevada, Missouri, a branch pipe line, which has had several owners, but which is now owned and operated by the Fort Scott & Nevada Light, Heat, Water, & Power Company. This branch line is familiarly known as the Gunn Pipe Line.

As a reason for desiring to place Fort Scott, Bronson, and Moran upon a different footing from the other cities of the state, the complainants urge that the leakage and waste of gas in and from the Gunn Pipe Line and connected distributing systems is

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so great as to render service in the usual manner prohibitive, and that the only fair and safe way under which it can furnish gas to the cities in question is to deliver it at the gateway to the Gunn Pipe Line at a flat rate which shall be reasonably compensatory.

In support of this contention the complainants have filed a statement of gas delivered to distributing companies, showing the percentage of gain or loss for the twelve months ending December 31, 1914. From this it would appear that during the year 1914 there was delivered to the Gunn Pipe Line 948,916 thousand cubic feet of gas; that the sales reported aggregated 300,214 thousand cubic feet; that there were unaccounted for 648,702 thousand feet, showing a wastage, leakage, and loss in various ways of 68.37 per cent of the gas delivered to the Gunn Pipe Line.

Besides the three Kansas cities above enumerated, gas from this pipe line is supplied to Deerfield and Nevada, Missouri. The length of the line from Carlyle to Fort Scott is approximately 39 miles.

It is not shown where this leakage and waste occurred; but if a proportionate share of it occurred in the towns under consideration, and was the fault of the distributing companies operating in those towns, then such a condition would probably justify the action requested by complainants. It appears to be conceded that much, if not all, of the unnecessary waste occurs in consequence of the bad condition of the Gunn Pipe Line; and the distributing company of Fort Scott insists, and we think properly so, that, as between that company and the Kansas Natural Gas Company, it is the duty of the Kansas Natural Gas Company to keep the Gunn Pipe Line in good condition, and that neither the Fort Scott Gas & Electric Company (the distributing company) nor the citizens of Fort Scott should be penalized on account of the failure of the Kansas Natural Gas Company to place and keep the Gunn Pipe Line in proper condition.

On March 13, 1907, a contract, to become operative April 1 of that year and extending until April 23, 1922, was entered into between the Kaw Gas Company (now the Kansas Natural Gas Company), of the first part, the Central Gas Company (the Gunn line), of the second part, and the Fort Scott Gas & Elec-

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tric Company (the distributing company), of the third part, which had for its general purpose the supplying of gas by the Kansas Natural Gas Company to the Gunn Pipe Line, the conveyance of that gas through the Gunn Pipe Line to the Fort Scott Gas & Electric Company's lines, and the distribution and sale of the gas to consumers by the distributing company, as the agent of the Kansas Natural Gas Company. This contract is quite lengthy and embraces many provisions. It is unnecessary to consider it in any detail, except to call attention to that portion of it which, in our judgment, controls the question under immediate consideration.

The first provision of that contract reads as follows:

"First, the Gas Company [Kansas Natural Gas Company] covenants, promises, and agrees that it shall and will go over, inspect, and place in first-class condition the present pipe line of said pipe line company [the Gunn Pipe Line], consisting of about 22 miles of 8-inch pipe and about 13 miles of 6-inch pipe line, running from its connection with the pipe of the Fort Scott Gas & Electric Company to the western end of said pipe line, at or near the Anderson-Finley station in Allen county, Kansas, within sixty days from the date hereof, the cost and expense of such inspection, repairing, and placing said pipe line in first-class condition to be borne by and paid by the said pipe-line company, and after said line has been placed in first-class condition, at the cost and expense of said pipe-line company, said gas company is to, and will, at its own proper cost and expense, keep and maintain said pipe line in good condition and repair during the life of this contract."

The 14th paragraph of the contract in question provides:

"It is expressly understood and agreed that the title to the said gas shall be and remain in the said gas company [the Kansas Natural Gas Company] until sold and delivered to the consumer; but, as between the parties hereto, the point of delivery by the gas company to the party of the third part [Fort Scott Gas & Electric Company] shall be the said reducing and regulating station at the limits of the said city, at which point of delivery the party of the third part accepts the same and agrees to transport, distribute and sell the same to the consumer. . . ."

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On the 1st of May, 1910, another contract was entered into between the Kansas Natural Gas Company, the Central Gas Company, and W. C. Gunn. The provisions of this contract were to be operative for twenty years. It will be observed that the Fort Scott Gas & Electric Company was not a party to this contract, and this company does not appear to have ever in any way waived its rights under the contract of March 13, 1907, to have gas delivered at the limits of Fort Scott.

The contract between the Kansas Natural Gas Company, the Central Gas Company, and W. C. Gunn is a very lengthy one, embracing a great many conditions and provisions, and it is unnecessary to consider it at any length. The general purpose, briefly stated, appears to have been the extension of the Gunn Pipe Line to Nevada, Missouri, and the supply and sale of gas to tributary territory. In this contract it is, however, provided that ". . . the Kansas company [Kansas Natural Gas Company] agrees that upon any breaks, blowouts, washouts, or accidents occurring in or to its pipe-line system, or Central company's line [Gunn Pipe Line] it will repair the same with all possible rapidity at the expense of the Kansas company, and when said Central company's line has been completed as required by this contract the Kansas company, at its own cost and expense, will keep and maintain said pipe line in good condition and repair during the life of this contract."

A supplementary contract appears to have been subsequently made between some of the parties, touching the repair of the lines, the distribution of gas, and, perhaps, some other incidental matters, but as the Fort Scott Gas & Electric Company was not a party to any contract except that under date of March 13, 1907, it ought not, in equity, be prejudicially affected by agreements to which it was not a party, nor should it, or the citizens served by it, be penalized by the failure of the Kansas Natural Gas Company to keep the pipe line between Carlyle and Fort Scott in proper condition, as provided for in the agreement from which we have quoted. For all purposes of this branch of the case, the Gunn Pipe Line from Carlyle to Fort Scott is a portion of the Kansas Natural Gas Company's pipe lines.

It is the opinion of the Commission that the consumers of gas in Fort Scott, Bronson, and Moran should receive gas in the

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accustomed manner, at the same rates and under the same collection rules and regulations hitherto in force, except that a monthly minimum charge of 50 cents should be made to each consumer of domestic gas, as is provided in the case of other cities.

[4] One of the chief points of difference between the complainants and most of the local distributing companies relates to the leakage and waste of gas from the distributing lines. The complainants claim that the distributing plants and lines of many of the local companies have been permitted to deteriorate to such an extent that they are little better than sieves, from which the gas is permitted to escape in undue, unreasonable and excessive quantities.

Under the agreements existing between the complainants and distributing companies, the only gas for which the distributing companies pay the Kansas Natural Gas Company is that measured through the consumers' meters. All losses due to waste or leakage from the distributing companies' lines or systems, as well as two thirds of all losses from uncollected accounts for gas, have been borne by the complainants. It will, therefore, be readily seen that the distributing companies have had very little incentive to control, by proper supervision and repair, the waste or leakage of gas from their lines. It mattered little or nothing, from a financial standpoint, to the distributing company how much gas was wasted. The loss fell upon the supplying company.

The evidence before the Commission shows that there was delivered by complainants in the year 1914 to the Elk City Field Line, the Coffeyville Field Line, and to forty-five cities and towns in Kansas and Missouri, approximately 20,912,906 thousand cubic feet of gas; that sales of 14,817,431 thousand cubic feet were reported; that there was a loss to the supplying company of 6,095,475 thousand cubic feet; that included as a part of that loss was 46,550 thousand cubic feet of so-called "free gas" furnished to sixteen cities and towns in Kansas; and that the remainder is unaccounted for, except that a portion was consumed by complainants in the operation of their plant. The contention of complainants is that, of all the gas supplied and delivered by them in the year 1914, about 29 per cent was wasted and lost through the lines of the distributing companies.

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It is conceded by all parties that a certain amount of leakage and waste is unavoidable. The respondent distributing companies, however, contend that the actual loss from this cause was much less than is claimed by complainants. It is asserted that many of the meters placed by complainants at the gateway to the distributing lines were defective, and did not correctly and properly register the gas which passed through them; and in support of this it is claimed by some of the respondents that check meters placed in the cities' lines showed that the amount of gas registered by complainants' meters was not actually delivered.

Testimony was introduced purporting to show what is a reasonable and fair waste and loss from and through the distributing systems. The evidence convinces the Commission that the percentage method is not, in many respects, either proper or scientific in adjusting leakage and waste through a distributing system. We believe such losses should be computed according to a formula based upon the length and carrying capacity of the pipes used in the system, and reduced to some common basis.

It was claimed by intelligent witnesses, and, indeed, it must be apparent to the ordinary mind, that a fair and reasonable percentage allowed for waste and leakage in one system would not be sufficient, or might be too great, in another; but the length of time required for, and the labor incident to, obtaining the necessary data for a scientific adjustment of this branch of the question, precludes our adopting at present any basis more accurate than a percentage system, based to some extent upon the annual volume of gas delivered at the consumers' meters.

Under the evidence presented to the Commission in this application, and without opportunity to investigate and consider in a scientific manner the condition and necessity of each distributing system separately, the best that can be done is to fix an additional percentage to be delivered for leakage and waste which shall be as nearly reasonable as appears possible under the circumstances. A fair percentage of the gas delivered by complainants to the distributing companies will be allowed, tentatively, for leakage and waste, it being understood that if

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experience demonstrates that this percentage is too great it may be reduced in any given case, upon a proper showing to the Commission.

The lines of the distributing companies appear in many cases to be at present in bad condition, and it would seem that a reasonable time should be given to repair them and put them in condition to conserve the gas delivered.

The company's statistics show that usually, though not always, the highest percentage of loss is suffered through those distributing systems marketing the smallest volume of gas. It is difficult, however, from those statistics or from the evidence to draw any general conclusions on this subject.

[5] The Commission believes that, tentatively, and until a further order may be made, the distributing companies should be divided into three classes:

First. All distributing companies marketing annually 10,000,000 cubic feet of gas or less;

Second. Those companies marketing annually more than 10,000,000 cubic feet, and not exceeding 20,000,000 cubic feet;

Third. Those companies marketing annually more than 20,000,000 cubic feet.

To each of the companies included in the first class 30 per cent of the gas delivered will be allowed to cover leakage and waste; to each of those included in the second class 25 per cent of the gas delivered will be allowed for that purpose; and to each of those embraced in the third class 20 per cent of the gas delivered will be allowed for that purpose.

Upon the volume of domestic gas marketed in 1914, in the territory affected by the proposed advance, the average percentage which we have allowed for leakage and waste would be 20.07, as against 29.15 actual percentage of loss claimed by complainants upon all business for that year.

It is, however, suggested that distributing companies should be diligent in endeavoring to reduce waste and loss through their lines to a minimum; because, as has been stated, the Commission recognizes the use of the percentage system as unscientific and unsatisfactory, and because its present use is tentative and experimental.

While settlements should be made monthly in the usual man-

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ner, adjustment of monthly percentages of leakage and waste should be made annually. The proportion of leakage and waste is much greater during certain seasons than during others. The percentage of loss indicated above is intended to be an average annual allowance, and, therefore, requiring an annual adjustment between the complainants and the distributing companies, with payment of any balance which may be found due from either party to the other.

But the leakage and waste should be accurately determined, or as nearly so as is reasonably practicable. Meters of an approved and reliable type should be placed at or near the intake of every distributing system. They should be thoroughly tested before being put in, and should again be tested from time to time, whenever the discrepancy between the reading of such meters and the accurate reading of consumers' meters becomes so marked as to render the accuracy or efficiency of the primary meter questionable. Moreover, the supplying company should test its meter at any reasonable time when requested to do so by the distributing company. Indeed, it would seem the part of wisdom and prudence for the distributing company itself to install a standard meter of approved type on its line before distributing any of the gas, in order to check and compare the result as shown by the meter of the supplying company.

[6] In this connection it may not be amiss to advert to the quality of gas supplied, and to be supplied, to the consumers by the complainants. The Commission, upon its own initiative, has during the past two years had many tests made of the gas supplied by the Kansas Natural Gas Company and its receivers to its consumers in Kansas. The results of various tests made have been very satisfactory. The heating value of ordinary artificial gas, measured by the approved standard, the British thermal unit, is from 550 to 600 B. t. u. per cubic foot. The result of the tests of natural gas supplied by complainants to the public in Kansas shows that such natural gas averages about 950 B. t. u. per cubic foot, which is a very efficient standard.

It will be readily seen that a rate fixed for gas of this quality might be too high if the standard were materially reduced. The evidence in this case shows that in certain restricted localities in Kansas natural gas is produced having a heating capacity of

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from 200 to 500 B. t. u. per cubic foot. Indeed, some of this gas is so inferior in character that it will not burn except in conjunction with coal, wood, or other combustible or inflammable material. Any rate established by this Commission, to be paid to complainants by consumers of their product, is predicated upon maintaining the quality of gas supplied to substantially the same standard hitherto maintained by the Kansas Natural Gas Company and its receivers in supplying this product.

[7] The evidence appears to show that certain of the distributing companies are carrying on their business at a financial loss. The Wyandotte County Gas Company, operating in Kansas City, Kansas, and the Consumers Light, Heat, & Power Company, operating in Topeka and Oakland, are, and have been for some time, in the hands of receivers. The latter company, by its receiver, Mr. Treleaven, submitted to the Commission tables and exhibits tending to show that during the year 1913, after paying its taxes and operating expenses, it was able to pay only $37,889.71 upon the interest on its bonded indebtedness of $50,000, leaving unpaid $12,110.29, without allowing anything for depreciation. A similar calculation for 1914 shows a deficit on its annual interest amounting to $22,242.34, no allowance being made in that year for depreciation. The plant account is annually credited with $20,000 for depreciation. These figures, if correct, indicate a net loss to this company in 1913 of $32,110.29, and in 1914 of $42,242.34. Upon the hearing it was urged, with considerable probability, that no schedule of flat rates for gas could be established and applied which would enable this company to meet its financial obligations. It was claimed that the economic law of "diminishing returns" would so operate in case of a horizontal advance in the price to consumers that the gains by reason of the proposed increased price per unit would be more than counterbalanced by losses due to diminishing quantities marketed. If advances in the price per unit were made in any reasonable degree commensurate with the schedule filed and requested by complainants, the Commission believes the result would be disastrous to all parties.

In the oral discussions upon the hearing of this phase of the matter it was urged, with great force, that what is known as a block or step schedule of rates should be made effective. It

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appears to be conceded that natural gas is worth, proportionately, very much more per unit for cooking and lighting purposes than for heating, and the claim is made that, therefore, a higher rate should be charged for gas used for cooking and lighting than for that used for other purposes.

In a brief filed by counsel for the receiver of the Consumers Light, Heat, & Power Company, and for its bondholders, after making certain preliminary statements, it is said: "With these facts clearly in mind, what is the solution of the present embarrassing situation presented by the evidence? The answer is so obvious that it comes without suggestion. It is that a schedule of rates must be established which will permit the use of gas by the public for all purposes, the rates based upon the cost of the service to the company and upon the value of the service to the consumer, taking into consideration the use to which the gas is applied, the time of such use, and the quantity demanded."

When, during oral argument, the adoption of a schedule of rates embodying this principle was first urged upon the Commission, the writer was impressed with its feasibility and fairness, if judiciously and not arbitrarily applied; but his colleagues were strongly of the opinion that a schedule so framed would be discriminatory. Their view appears to be sustained by the weight of authority on the subject. While in the brief of counsel other grounds of classification are casually mentioned, yet the chief basis relied upon in the oral discussion is the value of the service to the consumer. The cost per unit to the company is no greater for one class of service than for the other.

The evidence shows that the fuel supplied for heating is more uniformly distributed over the usual hours of consumption than is that supplied for cooking and lighting. The demand for gas used for cooking is generally made by all consumers at the same hours each day, giving occasion for what is denominated the "peak load" in the company's operations. The gas used for this purpose is not distributed over the day, but this extra demand is confined to three comparatively brief periods daily. During these periods, however, the distributing systems are in the winter season taxed to their capacity; and in the construction of the system equipment must be provided for carrying this "peak load" in conjunction with the gas necessary for heating.

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Considered as a single factor in rate making, the time at which gas for cooking is supplied would appear to demand a classification different from, and higher than, that applied to gas used for heating purposes; but the time of its use is only one factor in the problem.

Whether or not more gas is used annually for heating than for cooking and lighting does not appear from the evidence, so that the factor of quantity must be eliminated from consideration.

Besides the element of time, there remains, therefore, as a basis for the requested classification, "the value of the service to the consumer, taking into consideration the use to which the gas is applied." It has been repeatedly held that neither the value of the service to the consumer nor the use to which the commodity furnished or transported is applied can properly be made a basis of rate classification. This question came before the supreme court of Pennsylvania in 1899, in the case of Baily v. Fayette Gas-Fuel Co. In the syllabus of this case it is said:

"A company incorporated for supplying natural gas to customers for heat and light, which is a quasi public corporation, cannot discriminate by charging more for gas used for lighting than for that used for heating; there being no reason therefor, except that it is worth more to the consumer for lighting, measured by what he would have to pay for substitutes for such purposes."

In the body of the opinion in this case it is said:

"The regulation in question seeks to differentiate the price according to the use for heating or for light. It is not claimed that there is any difference in the cost of the product of the company, the expense of supplying it at the point of delivery, or its value to the company in the increase of business or other ways. . . . The real argument seeks to justify the difference in price solely by the value of the gas to the consumer as measured by what he would have to pay for a substitute for one purpose or the other if he could not get the gas. This is a wholly inadmissible basis of discrimination." Baily v. Fayette Gas-Fuel Co. 193 Pa. 175, 44 Atl. 251.

In Postal Cable Telegraph Company v. Cumberland Telegraph & Telephone Company, which was a telephone case, the same principle was applied. Paragraph 3 of the syllabus states:

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"A telephone company was not entitled to charge a telegraph company a greater rate for service than it charged other business houses for similar service, because the telegraph company derived a greater profit from the use of its telephone in the receipt and delivery of telegraph messages, since the rates chargeable by the telephone company depend on the character of its service rendered, and not on the value of the service to the customer."

In the body of the opinion it is said:

"It is clear that a greater charge is not justified against the telegraph company merely on account of the greater profit which it may receive from the telephone service than other business patrons. To consider, as an element entering into the proper charge for service performed by a common carrier, the financial value of such service to the customer, irrespective of the nature of the service rendered by the carrier, would manifestly be to introduce an entirely new basis of regulating its rates of service, directly violative of the fundamental rule that they are to depend upon the character of the service rendered, and one which cannot be supported either upon principle or authority." Postal Cable Teleg. Co. v. Cumberland Teleph. & Teleg. Co. 177 Fed. 726.

The same principle has been applied by the Interstate Commerce Commission in transportation matters:

"This Commission has always held that it is improper for the carriers to base their charges upon the use to which a commodity may be put, and while the statements and arguments presented by the defendants are persuasive, they do not convince the Commission that our position heretofore taken in this regard should be changed." Anaconda Copper Min. Co. v. Chicago & E. R. Co. 19 Inters. Com. Rep. 596.

"The rule is well established that a rate cannot be based upon the use to which the commodity is to be devoted; neither can a rate be confined in its terms or application to an individual or a class; it must be open to all shippers alike." Virginia-Carolina Chemical Co. v. Atlantic Coast Line R. Co. 22 Inters. Com. Rep. 397.

[8] Applications were made by parties using gas for the operation of gas engines during ordinary industrial hours and seasons, having for their purpose the retention of existing rates if gas charges for domestic purposes should be advanced. What

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has been said regarding the inadmissibility of the purpose for which the fuel is used, as a basis upon which to predicate a classification or rate, applies equally to gas used in the operation of gas engines.

[9] It may, however, well be the case that if the use to which a commodity is applied calls for its delivery to some consumers at a substantially different season and under materially and manifestly different conditions from those at and under which the same commodity is delivered to other consumers, such a diversity in time and condition might furnish a sound and proper basis for a classification of the service.

A very pertinent illustration of the application of such a basis is furnished by the existing schedule of rates of complainants. "Boiler gas" is sold at 12½ cents per thousand cubic feet, not because it is used for heating boilers, but because it can be, and is, supplied during the summer, when the minimum load is being carried by complainants' pipe lines, when it can be transported without interference with the other business of complainants, and when the carrying system would otherwise be partly idle. A classification or rate based upon the fact alone that the gas is used for heating boilers could, probably, not be defended or sustained.

Touching the matter of furnishing boiler gas, the Commission holds that it is the imperative duty of the complainants to furnish, so far as able, a sufficient supply of gas for all industrial purposes during the season when it will not interfere with or in any way lessen domestic consumption. This fuel should be furnished, without discrimination, to consumers in all cities desiring it.

True, the profit to the complainants on the sale of industrial gas will, possibly, be small; but the price fixed by the Commission in its former order (12½ cents per thousand cubic feet) is probably as high as can be paid for it in competition with other classes of industrial fuel, and its use should not be denied and abandoned merely because the company may not be able to make as great a profit upon the traffic as seems desirable.

Morever, the distributing companies serving cities in some parts of the territory probably need financial assistance to an equal degree with complainants. The success of the entire business depends almost as much upon the reasonable remuneration

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of the distributing companies as upon the financial prosperity of the supplying company. The distributing companies need the added revenue which would be obtained by supplying industrial gas to consumers during the spring and summer seasons, when their lines are comparatively idle.

With the ability to reach new sources of supply, which will be provided for, it will devolve upon complainants to furnish industrial fuel, without discrimination, to all who request it, at seasons when it will not interfere with the consumption of gas for domestic uses.

[10, 11] The companies distributing natural gas in many of the respondent cities are conducting their business under the provisions of franchise ordinances, whereby the usual right to lay mains in the streets, alleys, and other public places is granted. In such ordinances it is in most cases provided that, in consideration of the grant, the grantee or his assigns shall, during the continuance of the franchise, furnish gas to the city for certain specified purposes.

Ordinance No. 140 of the city of Columbus, which is "an ordinance authorizing the American Gas Company, its successors, and assigns, to construct, acquire, operate, and maintain gas works, mains, and appurtenances in the streets, roads, alleys, and public grounds of the city of Columbus, Kansas, for the purpose of supplying natural or manufactured gas to the city and citizens thereof, and defining the rights, privileges, and powers thereunder," provides: "As long as natural gas is furnished and sold to the inhabitants of the said city of Columbus under this franchise, said grantee shall, in consideration of this grant, furnish free to the city of Columbus natural gas for light and heat in the city hall, council room, and all city public buildings. . . ."

Ordinance No. 61 of the city of Thayer, which is an ordinance for substantially similar purposes, provides:

"Section 7. For and in consideration of the rights, privileges, and franchises hereby granted by said city of Thayer, said O. A. Evans shall furnish, free, gas used by said city in its council chamber and hose house, not to exceed one stove and two Welsbach lights or 6-foot tips."

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Substantially similar provisions are found in the franchise ordinance of other cities.

Is the provision requiring the furnishing of so-called "free gas," in consideration for the grant made in the ordinance, a contract protected against impairment by the provisions of § 10 of the Federal Constitution? Was the city council, in embodying that provision in the ordinance, acting only in its contractual capacity? Or was it, in so doing, acting in its legislative or governmental capacity? Which function, legislative or proprietary, was the council performing in the enactment of this feature of the ordinance? Upon the proper answer to these questions depends the power, or lack of power, of this Commission to prohibit the furnishing of gas to these cities at any rate other than, or different from, that at which it is furnished to other customers.

The authorities upon this question are far from being uniform, and lack of space forbids any extended quotation from or comment upon the decisions.

The majority of the Commission is of the opinion that the furnishing of so-called "free gas" to the cities, though in compliance with the terms of the ordinances, is a species of patent discrimination against those consumers who are required to pay scheduled prices. The furnishing of gas under such conditions certainly compels those consumers who pay stated prices to bear a public burden which should equitably be borne by all the taxpayers of the city. The price of the gas consumed by the city is paid by those only who use gas in the city and pay for it at certain rates. The burden of taxation is, thus, unequally imposed.

Again, the furnishing of gas in any quantity, under the terms of the ordinances in question, is so intimately connected with the rate making for the city that it seems impracticable in such cases to consider the rate question except in connection with the question of free gas. The raising or lowering of a rate may depend upon the quantity of such free gas supplied to the city.

As the change and establishment of rates is undoubtedly a legislative or governmental function, and in no way proprietary in its character, a majority of the Commission entertains the view that the ordinances in question do not control its action. The supplying of gas to any city by complainants, or by any

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distributing company, upon terms or at prices other than given and charged to the consuming public, is discriminatory and should be promptly discontinued.

In support of these views we desire to cite briefly what are regarded as controlling authorities:

"Before this court can be asked to determine whether a statute has impaired the obligation of a contract, it should appear that there was a legal contract subject to impairment; a contract which is *ultra vires* of a corporation, or subject to the will of the legislature, cannot be impaired by subsequent legislation." New Orleans v. New Orleans Waterworks Co. 142 U. S. 79, 35 L. ed. 943, 12 Sup. Ct. Rep. 142, 4th section of syllabus.

In the body of the opinion in that case, citing from East Hartford v. Hartford Bridge Co. 10 How. 511, 533, 534, 13 L. ed. 518, 527, 528, it is said: "It was claimed by the town that the state had impaired the obligation of its contract; but it was held that 'the parties to this grant did not, by their charter, stand in the attitude towards each other of making a contract by it such as contemplated in the constitution, and as could not be modified by subsequent legislation. The legislature was acting here on the one part, and public municipal and political corporations on the other. . . . The grantees likewise, the towns being mere organizations for public purposes, were liable to have their public powers, rights, and duties modified or abolished at any moment by the legislature. . . . Hence, generally, the doings between them and the legislature are in the nature of legislation rather than compact, and subject to all the legislative conditions just named, and, therefore, to be considered as not violated by subsequent legislative changes.'"

In Worcester v. Worcester Consol. Street R. Co. 196 U. S. 539, 49 L. ed. 591, 25 Sup. Ct. Rep. 327, it appeared that the railway company had obtained from the board of aldermen or selectmen of the city authority to construct and operate a street railway in the city of Worcester, Massachusetts; that the law then in effect provided that block paving should be laid and maintained between the rails of the track and for a distance of 18 inches outside of the rails for the entire distance covered by the location; that subsequently the law was changed and a provision was made for a somewhat different system of taxation; that the

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city sought to compel the railway company to repair and maintain the surface of the streets as provided for by the law in force when the locations were given and accepted.

In discussing this question the court said: "If these restrictions or conditions are to be regarded as a contract, we think the legislature would have the same right to terminate it, with the consent of the railroad company, that the city itself would have. These restrictions and conditions were of a public nature, imposed as a means of collecting from the railroad company part, or possibly the whole, of the expenses of paving or repaving the streets in which the tracks were laid, and that method of collection did not become an absolute property right in favor of the city, as against the rights of the legislature to alter or abolish it, or substitute some other method with the consent of the company, even though, as to the company itself, there might be a contract not alterable except with its consent. If this contention of the city were held valid it would very largely diminish the right of the legislature to deal with its creature in public matters in a manner which the legislature might regard as for the public welfare. In Springfield v. Springfield Street R. Co. 182 Mass. 41, 64 N. E. 577, this question was before the supreme judicial court of Massachusetts, and the contention of the city, to the same effect as the plaintiff in error contends in this case, was overruled. It was therein held that the city acted in behalf of the public in regard to these extensions of locations, and that the legislature had the right to modify or abrogate the conditions on which the locations in the streets and public ways had been granted, after such conditions had been originally imposed by it. The case at bar was decided at the same time as the Springfield Case, and the proposition that the legislature had the power to free the company from obligations imposed upon it by the conditions in the grant of the extended locations was adhered to, and the Springfield Case cited as authority for the same. We concur in that view."

The supreme court of New Jersey has very recently had this identical question before it. The city of Plainfield had, by ordinance and contract, given to the gas and electric light company authority to place and maintain poles and wires for the distribution of electricity in the streets and alleys of the city,

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and in the contract it was agreed as follows: "The company agrees and covenants to and with the city that the company, its successors, or assigns will at all times hereafter, while said company, its successors, or assigns shall continue to use any of the streets of the city or any of the subways thereof, light by electricity, free of charge, certain municipal buildings, offices, and rooms owned or occupied by the city officers, or that may hereafter be owned or occupied for city purposes."

It appeared that for fifteen years the company and its successor had carried out the terms of this contract; that in 1914 it discontinued furnishing free lighting for the public buildings; that the Board of Public Utility Commissioners of Plainfield, after a hearing, made an order directing the company to furnish, free of charge to the city, such service as the agreement provided; that upon a proceeding to set aside the order of the Board of Public Utility Commissioners, the supreme court held, in substance, that under the Public Utilities act of New Jersey of 1911 the provision of the contract was discriminatory.

The following is the syllabus:

"The New Jersey Public Utilities statute, § 18, subdiv. "d" (Public Laws 1911, page 381), forbidding the making or giving of any undue or unreasonable preference to any corporation or locality, has the effect of relieving an electric company from the performance of its contract, previously made, to furnish light in certain municipal buildings and offices free of charge, although such contract was lawful when executed. A contract whereby an electric utility agreed to light certain municipal buildings and offices free of charge shows upon its face, without any extensive [extrinsic ?] evidence, that it gives to the city an undue and unreasonable preference or advantage within the inhibition of the New Jersey Public Utility act." Public Service Electric Co. v. Public Utility Comrs. N. J. L. —, P. U. R. 1915C, 229, 93 Atl. 707.

See also Kenosha v. Kenosha Home Teleph. Co. 149 Wis. 338, 135 N. W. 848.

While agreeing, as a general proposition, with the views of his colleagues, to the effect that any measure of free service is a patent discrimination, is obnoxious to fair dealing, and should be discountenanced and prohibited, the writer is strongly of the

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opinion that the principle invoked cannot properly be applied to the facts surrounding the phase of the matter under immediate consideration. He therefore desires to express his dissent from the conclusion reached on this branch of the case. To attempt to set forth the grounds upon which he bases his dissent would answer no useful purpose.

[12] In the schedule of rates filed, provision is made for a monthly minimum charge. In most of the cities in Kansas served by complainants, no minimum rate for gas has heretofore been charged or collected. In any system of rates for measured service provided by a public utility of this type, the Commission is of opinion that an equitable minimum monthly charge should be provided for and paid. The reason for such provision is so apparent that it is not necessary to do more than refer to it in a general way. Whether the demand for service by an individual consumer may be great or small during a given period, the utility must hold itself at all times ready to furnish the service in a reasonable manner and to a reasonable extent. This preparedness, this readiness to serve, is worth something to the consumer, whether he makes a request for the service or not. He may not use any gas for a month, but complainants and the distributing system are expected to stand ready to serve him. He should, by every principle of equity, be held bound to render a fair return. The utilities have invested large sums in the equipment necessary to render the service, whether demanded or not, during any specified period; and the consumer should, whether he demands the service or not, be required to bear a portion of this burden.

[13] Complainants desire that the collections on account of minimum monthly charges be retained in full by the respective distributing companies; and the Commission believes this to be equitable, as the greater part of the burden of readiness to serve falls upon these companies. For this and other reasons, it is believed that the minimum charge should be uniform throughout the territory served, and that each consumer should be required to pay a minimum monthly charge of 50 cents. Of course, as appears to be the universal custom in such cases, when the charge for the volume of gas consumed during the month, computed at the standard rate, equals or exceeds the minimum

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charge, then the minimum charge becomes thereby automatically absorbed in the customary one.

[14] We desire at this point to quote from the creditors' agreement, pages 3 and 4:

". . . All parties hereto and interveners herein, including the lienholders, creditors, and stockholders, the state of Kansas, and the receivers, agree that the business in which the properties involved in this suit, and the custody of this court, are used, to wit, the production, transportation, and sale of natural gas, is a public-utility business of an extra hazardous and temporary character; that the return of the capital invested in said business and properties, with interest, must be provided during the life expectancy of the business; that the life expectancy, in the opinion of experts of said business, as it now exists, is not exceeding six years; that creditors and lien holders against the property devoted to public use in said business consent to the deferring of their right to foreclose and assert their several claims against said property, legal and equitable, and to have execution therefor, only upon the condition that their said investments and claims be returned, with interest, within said six-year period, or so much thereof as will properly secure the return of the balance. . . ."

The estimate of revenue necessary for the six-year period ending December 31, 1920, prepared and submitted by complainants, is predicated upon the assumption that the entire indebtedness of the company should be absorbed by net earnings within that time, and the property then returned to the stockholders, free from all liens or charges. We do not understand the creditors' agreement to mean this, nor do we understand it to be demanded by the equities involved. The actual bona fide investment in complainants' property should be protected; and the payment of the indebtedness should, if reasonably possible, be provided for from the earnings of the property and from its salvage value at the end of the six-year period. The public should not be required to pay rates higher than appears to be necessary to accomplish this general result. Indeed, as has been already indicated, rates established upon a higher plane would probably defeat the purpose of the advance.

In this connection, attention is called to the concluding por-

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tion of the quotation which we have made from the creditors' agreement, in which all that is provided for in relation to the creditors is that their said investments and claims be returned, with interest, within said six-year period, or so much thereof as will properly secure the return of the balance.

It will be observed that in this agreement the life expectancy of the plant of the Kansas Natural Gas Company is estimated at six years. Whether or not that estimate is correct, this Commission has no means of knowing. The entire business is so speculative in character, the extent of the supply is so uncertain, the other factors entering into the problem are so numerous, so indefinite, and so intangible, that nothing more than a rude approximation of the amortization period of complainants' system can be made. We have, therefore, adopted, for present purposes, the estimate of the life expectancy of the plant made by those who prepared the creditors' agreement.

Believing that the first step in the preparation of a proper budget for the six-year period is to ascertain the fair salvage value of the Kansas Natural Gas Company's plant (which includes, of course, the plants of the Kansas City Pipe Line Company and the Marnett Mining Company) at the end of that time, the Commission has caused this to be done by its engineer. The computation was based upon data furnished by the company, and we find that at the end of the period in question the main plant of the complainants will be worth 15 per cent of its reproduction cost.

In the reproduction cost, as estimated, are included:

Warehouse stock	$299,260.87
Gas leaseholds	1,126,359.34
Gas wells	656,968.65

The warehouse stock must be keep practically intact, if not added to, during the period under consideration.

To the 15 per cent of the reproduction cost of the main plant must be added, therefore, $299,260.87. Besides its main plant, complainants also own the Independence and Joplin distributing systems.

If the supply of natural gas available to complainants becomes exhausted in six years, those systems will be valuable for the distribution of the artificial product and of natural gas obtain-

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able from other sources; and the value will be much greater proportionately than on the principal system. The value of the Independence plant at the end of the period is fixed at $54,000; that of the Joplin plant at $188,000. There are also supply lines to Independence and Elk City, the salvage value of which is fixed at $5,000 and $3,700, respectively.

In addition to these properties, the company owns some oil properties of small value; but as its gas and oil properties, though carried on its books at comparatively large amounts, are of indeterminable and speculative value; as the Commission has refused to consider them as constituting a proper element of value for rate-making purposes, and as they may be, comparatively, exhausted before the end of the period under consideration, the Commission deems it unfair to attribute any salvage value to them. The salvage value account on December 31, 1920, would, therefore, stand:

Reproduction new, of main plant		$13,869,189.99
Deduct warehouse stock	$299,260.87	
Deduct gas leaseholds	1,126,359.34	
Deduct gas wells	656,968.65	
Total deductions		2,082,588.86
		$11,786,601.13

This leaves $11,786,601.13 as a basis for valuation.

15 per cent of $11,786,601.13	$1,767,990.17
Add warehouse stock	299,260.87
Add Independence plant	54,000.00
Add Joplin plant	188,000.00
Add Independence supply line	5,000.00
Add Elk City supply line	3,700.00
Total salvage value	$2,317,951.04

The Commission is of the opinion that this salvage value may be safely calculated upon to absorb the principal of the company's second-mortgage bonds, $1,700,250, at the end of this arbitrary six-year period, if all necessary charges, taxes, and operating expenses as well as the liquidation of all first-mortgage indebtedness and the interest on the second-mortgage indebtedness is provided for by revenue accuring during that time.

We therefore predicate our estimates upon the necessity of paying off by December 31, 1920, the first-mortgage bonds, the interest thereon, the interest annually upon the second-mortgage

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indebtedness, and all necessary charges, taxes, and operating expenses. The estimate of the amount necessary to meet charges, taxes, and operating expenses is taken from complainants' exhibit B, and is allowed substantially as requested. The estimate of sums necessary to absorb the existing first-mortgage indebtedness and pay the interest on the second-mortgage bonds is, of course, a simple mathematical calculation, the data being obtained from complainants' exhibit E. The following is the combined result:

P.U.R.1915E.

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Estimate of Amount Necessary to Pay all Charges, Taxes, and Operating Expenses, First-Mortgage Indebtedness, and Interest on Second-Mortgage Bonds.

	1915.	1916.	1917.	1918.	1919.	1920.	Total.
Purpose for which required:							
Gas purchases	$900,000	$900,000	$900,000	$900,000	$900,000	$900,000	$5,400,000
Taxes and operation	850,000	900,000	900,000	900,000	900,000	900,000	5,350,000
Maintenance (extensions)	500,000	200,000	200,000	200,000	200,000	200,000	1,500,000
Kansas Natural Gas Company's first mortgage	109,000	109,000	109,000	109,000	109,000	109,400	654,400
Kansas Natural Gas Company's interest *	39,000	33,000	26,000	20,000	13,000	7,000	138,000
Kansas City Pipe Line Company's mortgage	151,000	151,000	151,000	151,000	151,000	152,000	907,000
Kansas City Pipe Line Company's interest *	54,000	45,000	37,000	27,000	18,000	9,000	190,000
Kansas City Pipe Line taxes	35,000	35,000	35,000	35,000	35,000	35,000	210,000
Marnett Mining Company's mortgage	78,000	78,000	78,000	78,000	78,000	78,000	468,000
Marnett Mining Company's interest *	28,000	23,000	19,000	14,000	9,000	5,000	98,000
Marnett Mining Company's taxes	12,000	21,000	21,000	21,000	21,000	21,000	117,000
Kansas Natural Gas Company's second mortgage interest *	102,000	102,000	102,000	102,000	102,000	102,000	612,000
Total	$2,858,000	$2,597,000	$2,578,000	$2,557,000	$2,536,000	$2,518,400	$15,644,400

* Estimates of interest are given in round numbers.

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The income of the Kansas Natural Gas Company for 1914 having been $2,826,346.51, it would appear that a moderate increase in rates in those cities where such increase can properly be made will produce sufficient revenue for the complainants, and provide against some contingencies liable to occur in a hazardous business. If the company makes the extensions to new sources of supply which are contemplated in its estimate—if consumers are assured of a reasonably adequate volume of gas to meet their wants—a moderate increase in prices to the consumer will diminish the sales very little, if at all. However, a small diminution in the volume of gas to be marketed should be provided for in the estimate of sales. The Commission believes that a horizontal increase of 3 cents per thousand cubic feet, effective in all markets where such increase can properly be made, will produce revenue sufficient to enable complainants to accomplish, during the six-year period, what has been outlined as necessary.

As stated, an increase of 3 cents per thousand cubic feet will occasion little, if any, diminution in the quantity of gas consumed; and it is believed that a decrease of 2 per cent in the volume of domestic gas marketed in 1914, in those cities in which the advance in rates is made effective, will amply cover any prospective loss of sales brought about by the advance in rates.

It is assumed that the revenue derived from the sale of domestic gas to be marketed in 1915 in Coffeyville, Independence, St. Joseph, and the cities supplied by the Gunn Pipe Line, also from the sale of industrial gas, will at least equal that derived from the same sources in 1914. With the provision made for the purchase of gas and for the extension of complainants' system, the income derived from the marketing of industrial gas should be materially increased.

No advance above a net rate of 20 cents per thousand cubic feet can be made in Coffeyville or Independence, as those cities are situated in the gas field, and any increase in the net price would result in complainants' competitors in those markets obtaining the business. Loss, instead of gain, would probably result from an advance in rates at those points.

The cities supplied through the Gunn Pipe Line (Moran, Bronson, Fort Scott, Deerfield, and Nevada) now pay 30 cents net per thousand cubic feet for gas delivered at consumers' meters; and

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it is the view of the Commission that as the contemplated advance in rates applicable to neighboring cities does not increase the net price to a point as high as that paid by the Gunn Pipe Line consumers, the rate to those consumers should not be advanced.

The consumers in St. Joseph now pay 40 cents per thousand cubic feet, and equity does not, in our judgment, require an increase in this rate.

Briefly stated, our view is, that at all markets where the net price to consumers is 25 cents per thousand cubic feet the rate should be increased to 28 cents net; and our estimates of annual revenue for the six-year period are made upon that basis.

Using, as we do, the income of 1914 as a basis for estimates, if the contemplated advance in the price of gas diminishes the aggregate volume of domestic gas sold 2 per cent wherever the advance is applied, then the company's income in 1914, so far as derived from sales of domestic gas in the territory affected by the advance, must be reduced 2 per cent to arrive at the true, or diminished, basis for an estimate for the six-year period.

As factors in the calculation, we find from the evidence that the volume of domestic gas sold in 1914 in the territory affected by the proposed advance was:

In Kansas City, Kan., and Kansas City, Mo.	7,163,087 M. cu. ft.
In Parsons	495,104 M. cu. ft.
In other territory affected by proposed increase	4,380,335 M. cu. ft.

The price of gas to the consumer was 25 cents per thousand cubic feet. The proposed increase is 3 cents per thousand cubic feet.

The complainants' proportion of the collections in Kansas City, Kansas, and in Kansas City, Missouri, is 62½ per cent; in all the other markets affected by the increases it is 66⅔ per cent. In Parsons during 1914 complainants received 75 per cent of gas collections; henceforward their proportionate share will be 66⅔ per cent. Applying these factors in determining the probable annual income of the company, after making an increase of 3 cents per thousand cubic feet in all territory where the present price is 25 cents, we find that, assuming that the advance in price will result in a loss of 2 per cent of the volume of gas marketed in this territory in 1914, deductions from and additions to the company's 1914 income would be as follows:

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Items of Loss.		
No. 1. Domestic gas sold in Kansas City, Kan., and Kansas City, Mo., in 1914	7,163,087	M. cu. ft.
2% of 7,163,087 M. cu. ft. =	143,261	M. cu. ft.
$0.25 × .625 × 143,261 =	$22,384.53	loss.
No. 2. Domestic gas sold in Parsons in 1914	495,104	M. cu. ft.
$0.25 × .08½ × 495,104 =	$10,314.66	loss.
No. 3. Domestic gas sold in other territory affected by the increase	4,380,335	M. cu. ft.
2% of 4,380,335 M. cu. ft. =	87,607	M. cu. ft.
$0.25 × .66⅔ × 87,607 =	$14,601.17	loss.
Items of Gain.		
No. 1. Domestic gas sold in Kansas City, Kan., and Kansas City, Mo., in 1914	7,163,087	M. cu. ft.
98% of 7,163,087 M. cu. ft. =	7,019,826	M. cu. ft.
$0.03 × .625 × 7,019,826 =	$131,621.73	gain.
No. 2. Domestic gas sold in other territory affected by the advance, in 1914, including Parsons	4,875,439	M. cu. ft.
98% of 4,875,439 M. cu. ft. =	4,777,931	M. cu. ft.
$0.03 × .66⅔ × 4,777,931 =	$95,558.62	gain.

Income in 1914		$2,826,346.51
Deductions or loss—No. 1	$22,384.53	
No. 2	10,314.66	
No. 3	14,601.17	
		47,300.36
Diminished basis of estimate		$2,779,046.15
Add items of gain—No. 1	$131,621.73	
No. 2	95,558.62	
		227,180.35
Estimated annual revenue		$3,006,226.50
Estimated annual expenditure		2,858,000.00
Balance		$148,226.50

In arriving at this estimated income, we have provided for a possible loss of 2 per cent in the volume of domestic gas marketed. As a matter of fact, however, there will probably be no such loss. The complainants' auditor and principal witness testified that, in his judgment, the present rate could be advanced to 35 cents per thousand cubic feet without any substantial loss in the volume marketed. With this view the Commission cannot agree. It is believed that an advance of 40 per cent upon the present net price would practically destroy the use of natural gas for ordinary fuel purposes.

The estimated margin of income over expenditure for 1915, $148,226.50, is moderate. Some margin is necessary in order that provision may be made for unexpected contingencies in a hazardous business; and this is deemed sufficient, as the allowance for expenditures for the current year is liberal. For the remain-

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ing years of the period the estimated excess of income over expenditures is ample to provide for unforeseen outlays.

Representatives of the consumers may, perhaps, view the advance in rates provided for as being greater than is demanded by the necessities of complainants after the current year. The operating cost and taxes for 1914 amounted to $879,351.22, in which was included an item of $137,463.11 for expenses of the Federal and state receiverships during the period of litigation. The deduction of this item reduces the operating expenses and taxes for that year to $741,888.11. It will be observed that in our estimate we have allowed for the current year $850,000, and for each of the remaining years of the period an annual item of $900,000 to cover taxes and operating expenses. These sums may appear unnecessarily large, in view of past experiences; but it must be borne in mind that the evidence establishes the fact that the complainants' present sources of supply are rapidly approaching exhaustion; that extensions of their pipe lines into new fields are necessary; that every such extension materially increases the cost of operation; and that the business is of a hazardous and speculative nature. Besides, there is unpaid a balance of $340,050 interest on the second-mortgage indebtedness, due January 1, 1915, which, with interest from that date, should be liquidated during this period.

[15] The data available are not such as to enable the calculations of either revenue or expenditure to be made with ordinary mathematical certainty, and a reasonable margin should be given for unexpected outlays liable to occur in conducting so hazardous an enterprise.

Besides, the public is vitally interested in the continuation of this service, and no unreasonable restriction should hamper the complainants in reaching a new source of supply and serving the public as long and as well as practicable. While the cost of a public service should always be kept within reasonable limits, yet the efficiency and regularity of the service are very material considerations. Without efficiency and regularity the service of complainants is of very little value to the public. In the matter under consideration this efficiency and regularity cannot be reached or maintained unless complainants are enabled to secure an additional source of supply; and, taking into consideration the probable

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vicissitudes of the gas business during the ensuing six years, we do not think that the estimates for extensions, taxes, and operating expenses, while sufficiently large, are excessive.

Having in those estimates provided liberally for the payment of all taxes, maintenance charges, and operating expenses, we have also provided for the payment of all first-mortgage bonds and their interest, as well as interest on the second-mortgage indebtedness. This will leave unpaid at the end of the period the principal of the second-mortgage bonds, amounting to $1,700,250. To meet this obligation there will remain of the assets the salvage value of the company's plant, estimated at $2,317,951.04, and the residue of the gas and oil properties, concerning whose value we have made no estimate.

It developed upon the hearing that more than half the natural gas supplied and marketed by complainants is sold in the state of Missouri. It is conveyed, by means of pipe lines passing through Kansas, to Joplin, Kansas City, St. Joseph, and other cities in our sister state. It would be manifestly unfair to permit complainants to advance the price of gas to their Kansas patrons unless a corresponding increase were made to consumers in Missouri. It is conceded that an advance in Kansas without a similar one in Missouri would be unavailing for the purposes contemplated by complainants, and they do not desire any advance in Kansas except as it may be simultaneous with a corresponding one in Missouri.

This Commission, therefore, awaits the pleasure and action of the rate-regulating body or bodies of Missouri having jurisdiction of the subject-matter; and if in that state proper and necessary orders be issued establishing a schedule of rates as herein outlined, an order, effective, if possible, simultaneously, will be issued by this Commission in accordance with the views herein expressed.

Joseph L. Bristow, Chairman; John M. Kinkel, C. F. Foley, Commissioners.

Note.—Value of service as basis of rate making; all the traffic will bear.

With reference to commodity rates of railroads, it has been said: "It readily appears that the 'value of the service to the shipper' theory is not sound from the standpoint of the rate-paying public as a basis to be applied to the entire volume of rates, for the 'value of

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the service to the shipper,' of course, depends upon what the shipper can afford to pay and live, and this theory, naturally quite popular from the railroad standpoint, if applied consistently, would give all of the profit of any industry dependent upon transportation of the carriers beyond the mere cost of carrying on the industry and the bare living of those engaged therein. Under this theory the necessity of the shipper will be the measure of the freight rate, and the farmer who has produce to market will market it provided the freight rate is not so high that he can afford better to let it rot. This theory, however, does have an important place in rate making, and it is the failure to recognize this fact that produces most of the difficulties in applying the other main theory of rate making; namely, the 'cost of the service' theory." Report of committee on rates and rate making, 1 P. S. Reg. 768.

Practically the railroad's well-known maxim to charge what the traffic will bear meant that the traffic manager, whose duty it was to get the best rates for the people who appointed him, should generally exact from any traffic the highest rate which would move that traffic. Ibid.

Railroads have no legal right to graduate their charges in proportion to the prosperity which attends industries whose products they transport. Tift v. Southern R. Co. 123 Fed. 789.

"The test to be applied in determining the reasonableness of a rate should not include the element of sharing in the profit of the business of the producer of the article transported. The question is, 'Does the rate yield a reasonable compensation for the service rendered?' What the business will stand is not the proper test. The prosperous and progressive producer should not be required to pay tribute by reason of his superior skill and business capacity. The carrier is benefited by the prosperous condition of the shipper in the increased tonnage of his traffic, both in and out. This, however, is a legitimate way of participating in the prosperity of the shipper." Indiana Ice Cream Makers' Asso. v. Adams Exp. Co. 5 Am. Rep. Ind. R. C. 73, 79 (1910).

In Re Tariffs of Express Cos. 6 Ann. Rep. Can. R. C. 240, 259 (1911) Mr. Maurice T. Jones, of the United States Express Company, being asked whether express rates did not grow up by experience, answered:

"A. They did. At first we had no tariff departments, and the rates were made in a very rough way. I heard the president of the Pacific Express Company, who was a very old expressman, once describe the old method of making rates. He said a man would come into the office with a box, and the clerk would look him up and down and try to conjecture how much he had in his pocket.

"Mr. Shepley. That sounds reasonable, too.

"Witness. And if he thought he had a dollar, he would charge

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him a dollar, and if the man said, 'I have only got 75 cents,' he would say, 'Oh, well, all right' and take the 75 cents. That was the old method of making rates before they had a tariff department, but now we make rates on a different basis. The rates have to be matters of record; they have to stand for a long time perforce, because we cannot change them; we have so many millions of rates that it would be physically impossible to change them often."

In this case it is said: "It does not seem unfair to conclude that when express companies commenced business they charged all they could get for the carriage of traffic. This is simply carrying the personal element into the corporation. Most people charge all they can get for any service they perform, or commodity they have for sale, and the managers of corporations would not be human if they did otherwise. But where the corporation falls within the public utility class, and for public reasons is under government control or requires authority or franchise from parliament to enable it to take tolls for its services, it appears to us that the way to approach the promotion of a tariff is something like this: What are fair tolls that we can perform certain services for the public for and obtain reasonable returns upon the investment after making all proper provisions by way of reserve fund or otherwise, for all probable losses of every kind, shrinkage in business, etc.? instead of approaching it this wise: What are the heaviest tolls we can obtain from the public for the least services we can give them?"

On the other hand, it has been held that the amount of income a water company is entitled to receive is not to be determined by merely considering the value of the property used in rendering the service. The value of the service the public receives is also an element to be determined in considering whether the rates are reasonable. Redlands, L. & C. Domestic Water Co. v. Redlands, 121 Cal. 365, 53 Pac. 843.

"The worth of the service," said the Wisconsin Commission, "is a principle that may, perhaps, be applied to valuations as well as to the rates. It has been held that the rates charged by a plant should not be higher than the worth to the user of the services it renders. A strict adherence to this rule in the determination of the maximum rate would involve an inquiry into the cost of other means for obtaining the same service, and into the cost to the municipality itself of providing such services, together with the amount the municipality might be willing to pay in addition to the actual cost of these services in order to be relieved from the troubles and risks that are involved in furnishing them. In a similar manner the worth of the plant might be measured by the cost of providing another plant that would serve the purpose equally well, plus perhaps whatever a municipality might be willing to allow for being relieved of the risks and responsibilities that are always inherent in such enterprises. But

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while this principle may be sound in the main, it may not always result in exact justice to both sides." Hill v. Antigo Water Co. 3 Wis. R. C. R. 623, 639 (1909).

MARYLAND COURT OF APPEALS.

YEATMAN

v.

TOWERS et al.

[No. 52.]

(— Md. —, 95 Atl. 158.)

Rates — Water — Jurisdiction of Commission.

1. A Public Service Commission has jurisdiction to fix water rates, irrespective of whether the supply is furnished by a corporation or an individual, under Md. Code Pub. Civ. Laws, article 23, §§ 413 and 415, extending the jurisdiction of the Commission over all water companies, and declaring that the term "water company" includes a corporation and a person.

Public utilities — Water — Public service — What constitutes.

2. A person supplying water to buildings under an agreement to furnish a water supply "for all the buildings, in number about 100" contemplated to be erected, which does not restrict him to supply only those buildings, is engaged in a public service, so that a Public Service Commission may regulate the rates, although a plant is constructed for the purpose of supplying only 100 buildings.

Rates — Water — Regulation of merged plant — Powers of Commission.

3. Upon the merger of a small water plant engaged in a private service with large corporations engaged in a public service, the public character of the service extends to the entire plant, so that a Public Service Commission may regulate the rates of the former private service.

Constitutional law — Police power — Abandonment by nonuser — Water rates.

4. Regulation of water rates is an exercise of the police power of the state, of which it cannot devest itself, and does not abandon by nonuser.

Constitutional law — Police power — Delegation of — Regulation of water rates.

5. The police power of the state to regulate water rates may be exercised by the legislature directly, or the legislature may delegate the power to a Public Service Commission, as is effected by Md. Code, Pub. Civ. Laws, article 23, §§ 415, 456.

Constitutional law — Obligation of contract — Water rate.

6. The obligation of a contract to supply buildings with water at

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a specified rate is not unconstitutionally impaired by a subsequent order of a Public Service Commission providing for two classes of service, one at a rate identical in amount with that named in the contract, which does not provide for any particular kind of service, and the other a somewhat higher rate for a different and greater service.

Constitutional law — Obligations of contract — Police power — Water rates.

7. The obligation of a contract to supply buildings with water at a specified rate is not unconstitutionally impaired by a subsequent order of a Public Service Commission changing the rate in the exercise of the police power delegated to it by the legislature.

[June 24, 1915.]

APPEAL from a decree of the Circuit Court of Baltimore City sustaining a demurrer to a bill filed in a suit to enjoin the Public Service Commission and another from putting into effect an order establishing a schedule of water rates; affirmed.

Argued before Boyd, Ch. J., and Briscoe, Burke, Urner, Stockbridge, and Constable, JJ.

Appearances: George W. Lindsay (Richard B. Tippett & Son on the brief) for appellant; W. Cabell Bruce for appellees.

Stockbridge, J. delivered the opinion of the court:

In April, 1906, Elias A. Blackshere acquired from Clarence M. Griffin a tract on Park Heights avenue, just outside the corporate limits of Baltimore city, for the purpose of improving the land by the erection of dwellings thereon. At the time of the purchase there was no available water supply for the houses so to be built, and accordingly, by an agreement of the same date as the deed, Griffin undertook to furnish a water supply "for all the buildings, in number about 100," contemplated to be erected by Blackshere. The agreement gave to Griffin "the sole and exclusive right and privilege to lay water mains and pipes . . . in, about, and upon said lands," and further provided the water rates to be charged for the service in the following language:

"For each dwelling house not over $10 per annum, or if meter service be preferred by any occupant of said houses, the charges shall not be in excess of 20 cents for each 1,000 gallons of water consumed."

Fifteen of the houses built by Blackshere on the land so conveyed to him now belong to the appellant, Yeatman, and the water plant constructed by Griffin was by him sold to the Park Heights

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Water Company, and by it in turn to the Suburban Water Company. In 1911 the last-named corporation filed with the Public Service Commission a new and different schedule of rates to be charged; and again in 1914 a revised schedule. Objections appear to have been made to this schedule. A hearing was had before the Public Service Commission, and on October 14th an opinion and order of the Commission filed. By that order, after imposing certain requirements upon the water company, the following provisions regulating rates appear:

"Houses with bathroom.—Minimum quarterly charge $3.75, entitling to consumption of 12,500 gallons, excess use to be charged for at rate of 40 cents per 1,000 gallons.

"House without bathroom.—Minimum quarterly charge $2.50, entitling to consumption of 8,000 gallons, excess use to be charged for at the rate of 40 cents per 1,000 gallons."

Two days after this order the bill in this case was filed to enjoin putting into effect the provisions of the order in relation to rates. A demurrer to the bill was sustained by the circuit court of Baltimore city, and this appeal followed.

[1–3] The grounds upon which the appellant relies may be grouped under two heads: (1) That the agreement of 1906 was an agreement between individuals, and related to a private, rather than a public, service, and so is outside the jurisdiction of the public service commission. (2) That as the agreement antedated the creation of the Commission, that body lacks power to in any way modify the terms of the agreement without infringing the constitutional inhibition against legislation impairing the obligations of contracts.

The first of the grounds as stated involves several distinct matters, but before takng up the consideration of these, there are certain facts appearing in the bill and agreement, which was filed as an exhibit, to be noted. By the language of the agreement, Griffin was given a monopoly of supplying water to the dwellings to be erected on the land conveyed to Blackshere, and there was no restriction upon him limiting him to supply only those houses; and, in the next place, by the order of the Commission, there were two classes of service provided for, one at a rate precisely that named in the Griffin-Blackshere agreement, and the other a somewhat higher rate for a different and greater service. The agree-

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ment nowhere specified the nature of the service to be performed except, in general language, to furnish Blackshere "an adequate supply of water to enable said Blackshere to carry on his contemplated building operations on the above lands, and to fully establish, install, and complete a plant of sufficient capacity to furnish every building to be so erected with sufficient potable water for the needs of those persons who may occupy the same."

The undertaking of Griffin, by a strict construction of the language of the agreement, was only to supply a sufficient amount of water suitable for drinking to supply the needs of the persons who might occupy the houses to be built by Blackshere.

At the outset of the case the question is raised as to the jurisdiction of the Public Service Commission in the premises, at the time of its appointment under the act of 1910. The dates of the transfer from Griffin to the Park Heights Water Company and by it to the Suburban Water Company do not appear in the bill or exhibits. But it is immaterial whether the water supply was being furnished by Griffin or by one of the corporations named. All alike were within the jurisdiction of the Commission by the express language of the statute (Code, art. 23, § 413):

"The term 'water company,' when used in this subtitle, includes every corporation, company, association, joint-stock company, or association, partnership, and person, . . . owning, operating, managing, or controlling any plant or property, . . . distributing or selling for distribution, or selling or supplying for gain, any water."

This language is nearly, if not quite, conclusive of the question. The only possible inquiry open is whether Griffin was engaged in a public as distinguished from a private service. The bill concedes that the plant constructed was for the purpose of supplying water to about 100 dwellings. If this is to be regarded as constituting a private service, how many are necessary to transform it into a public service? Griffin was not limited in his agreement with Blackshere to supply only a definite, limited number, nor was the undertaking one to supply only some of the occupants of the houses to be erected, but all. This was distinctly a public service, therefore. But if it be assumed *ex gratia* that the service as rendered by Griffin was one private in its nature, when that plant became merged into the larger

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ones, which were corporations engaged in a public service business, the public character of the service extended to the entire plant. It is like a case where the railroad corporation absorbs a number of petty connecting roads. The separate entity of each is not preserved, but the aggregation forms one entire public service corporation, amenable to legal regulations in all its parts.

[4, 5] The right to regulate rates for which water will be supplied is in its nature the execution of one of the powers of the state, of which it can no more devest itself than it can part with its power of taxation. The power may or may not be exercised, but its nonuser is not an abandonment of the right. The nature of the right as an exercise of the power of the state is commonly referred to that class of powers designated as the "police power," and the right extends not merely to the regulation of rates, but to the regulation of other matters connected with the service afforded to the public. This power is one which may be exercised by the legislature directly, or its exercise may be committed by the legislature to a board or commission, as has been done in this state by the creation of the Public Service Commission, and since the supplying of water must, by reason of the nature of the service, be deemed to be a public service, the regulation of the rates at which it shall be furnished falls clearly within the powers of the Commission. By § 415 of article 23 the powers of that body are said to extend "to all water companies, and to the land, property, dams, water supplies, canals, or power stations, and the operation of the same within this state," and by § 456 the same powers of regulation of the rates conferred on the Commission with regard to common carriers are made applicable to water companies.

[6, 7] There remains for the disposition of this case only the question whether the order of the Public Service Commission, passed in the exercise of the power conferred upon it by the legislature, has the effect of impairing the obligation of a contract. As already pointed out, one of the schedules embodied in the order of the Public Service Commission fixed a minimum rate identical in amount with the rate named in the agreement between Griffin and Blackshere, and that agreement not having provided for any particular kind of service, the order as promul-

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gated cannot be said in any way to be in violation of the agreement. But the legal principle here involved is subject to and affected by a further consideration. Contracts, even as between individuals, when entered into, are necessarily subject to the control of the police power of the state, whenever such contract relates to matters which are or may be subject to the exercise of such powers, and as far back as the case of Munn v. Illinois, 94 U. S. 113, 24 L. ed. 77, it was laid down that when the owner of property devotes it to a use in which the public has an interest, he, in effect, grants to the public an interest in such use, and must, to the extent of that interest, submit to be controlled by the public for the common good as long as he maintains the use. Some of the cases which have dealt with situations where there had been an establishment of rates directly by the legislature have distinctly denied the theory that such legislative establishment of rates constituted any contract whatever, and have held accordingly that the rates established were liable to change at any time by the legislative authority which had originally enacted them. The true principle which must control in a case like the present is that laid down in Manigault v. Springs, 199 U. S. 473, 50 L. ed. 274, 26 Sup. Ct. Rep. 127, in the following language: "It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the state from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power, which in its various ramifications is known as the police power, is an exercise of the sovereign right of the government to protect the lives, health, morals, comfort, and general welfare of the people, and is paramount to any rights under contracts between individuals."

Finding no error in the decree appealed from, the decree of the Circuit Court of Baltimore city sustaining the demurrer to the bill of complaint and dismissing the same will be affirmed.

Decree affirmed, with costs.

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CALIFORNIA RAILROAD COMMISSION.

IN RE TULARE COUNTY POWER COMPANY et al.

[Decision No. 2629; Application No. 1756.]

Consolidation, merger and sale — Electric plant — Valuation — Conditions.

1. An electric power company adequately able to absorb the duplicate facilities of a competitive company without detriment to the service or rates of either company or to itself was authorized to purchase from a power company operating in the same territory all of its plant and property including the franchises, where it appeared that the selling company was financially unable to continue properly to serve its patrons, upon condition that the price paid should not be binding for rate-making or other purposes; that the transfer of franchises should be made only after the purchasing company had filed a statement of the franchises under which it proposed to operate, to be approved by the Commission, and that the purchasing company stipulate that it does not, and will not, claim a value for the franchises so conveyed to it other than the actual amount paid by the selling company in acquiring them.

[July 23, 1915.]

APPLICATION of Tulare County Power Company to sell its plant to the Mount Whitney Power & Electric Company to buy said property; granted conditionally.

Appearances: Farnsworth & McClure for Mt. Whitney Power & Electric Company; E. I. Feemster and C. E. Bush for Tulare County Power Company; W. H. Orrick for Trustees for Creditors of Tulare County Power Company.

Loveland, Commissioner: This is an application of Tulare County Power Company for authority to sell its electrical distributing system and plant to Mt. Whitney Power & Electric Company, and of the latter company to purchase the same for the sum of $550,000 payable as hereinafter set forth.

Tulare County Power Company was organized under the laws of the state of California on June 10, 1910, to furnish electricity for the purposes of power and lighting in Tulare county.

Thereafter, on June 13, 1912, it applied to this Commission for certificates of public convenience and necessity to operate in said county and the cities of Tulare, Lindsay, and Exeter. This application was opposed by Mt. Whitney Power & Electric Company, which claimed that it was already adequately serving the

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territory, that the Tulare company's project was impracticable, and that it was impossible for the Tulare company to fulfil the promises which it was making to consumers.

Briefly stated, the plan of the Tulare County Power Company was to furnish power to its stockholders at the estimated cost price of $36.00 per horsepower per annum, and to other consumers at $50.00 per horsepower per annum, the rate then being charged in this territory by the Mt. Whitney company.

In passing upon this application the Commission stated that it would be disposed to deny the application of the Tulare County Power Company were it not for the fact that it had begun actual construction work and was pursuing such work in good faith under franchises granted previous to the effective date of the Public Utilities Act, § 50 (*b*) of the act providing:

"That when the Commission shall find, after hearing, that a public utility has heretofore begun actual construction work and is prosecuting such work, in good faith, uninterruptedly and with reasonable diligence, in proportion to the magnitude of the undertaking, under any franchise or permit heretofore granted but not heretofore actually exercised, such public utility may proceed, under such rules and regulations as the Commission may prescribe, to the completion of such work, and may, after such completion, exercise such right or privilege." [Extra Sess. 1911, p. 43.]

The Tulare County Power Company was originally incorporated with an authorized capitalization of $1,000,000, divided into 10,000 shares of the par value of $100 each, of which 2,500 were 7 per cent cumulative preferred and 7,500 were common.

To put into effect its plan of furnishing power to its stockholders at cost, the company amended its original articles of incorporation so that 5,500 shares of common stock were set aside and designated "consumers common stock," and the owner and holder of each share of such stock was thereby entitled to the privilege of receiving one horse power of electric energy at the actual cost of production. This actual cost rate was first fixed at $36 per horse power, but was later raised to $42 per horse power. This special stockholders' rate has since been eliminated entirely from the company's tariffs, upon recom-

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mendation of this Commission, so that all the consumers, whether stockholders or not, are now paying the same rates.

Very shortly after its inception the Tulare company was beset with financial difficulties, due largely to its failure to provide for an adequate measure of long-term financing. The company also encountered difficulties in connection with a power contract with the San Joaquin Light & Power Corporation, by which it agreed to take a minimum of 1,000 horse power throughout the year at $40 per horsepower per annum.

After several ineffectual attempts to finance its properties, applicant arranged with Mr. C. J. Wrightsman, of Oklahoma, for a loan of $250,000 by paying an extremely onerous interest rate. This indebtedness was represented by twenty-two notes, payable to C. J. Wrightsman as follows:

1 note for $25,000 due February 1, 1914.
1 note for $25,000 due August 1, 1914.
20 notes for $10,000 due February 1, 1915.

These notes were secured by a deed of trust covering the properties of the Tulare County Power Company. In addition a number of the stockholders of the company have given bonds, with their land holdings as security, to further secure the payment of this indebtedness. Under the terms of these agreements the notes bear interest at 12 per cent per annum after maturity. At the present time the 20 notes for $10,000 each are still unpaid.

For the calendar year 1914 the Tulare company's gross revenue was $143,021.99, and the net revenue, after payment of operating expenses, $17,204.81. After the payment of interest the company showed a deficit for the year of approximately $20,000.

The Tulare company submitted a statement of assets and liabilities as of May 31, 1915, as follows:

Assets.

Property	$775,283.63	
Material and supplies	5,908.10	
Assessments paid on company stock	14,817.85	
Unamortized discount on securities	19,725.02	
Uncompleted work orders	113.45	
Cash and deposits	895.93	
Accounts receivable	34,502.48	
Notes receivable	13,734.24	
Accrued suspense accounts	5,009.06	
Deficit	64,457.55	
		$934,537.31

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Liabilities.

Preferred stock issued	$202,519.00	
Consumers stock issued	141,200.00	
Common stock issued	5,275.00	
Preferred stock issued but owned by company	7,300.00	
Consumers stock issued but owned by company	22,400.00	
Common stock issued but owned by company	194,729.00	
Payments on stock not issued	11,949.35	
Prepaid power	945.15	
Escrow account stock	26,761.74	
Depreciation reserve	11,060.00	
Assessments	40,986.90	
Notes payable	249,339.14	
Accounts payable	8,604.54	
Pay rolls payable	1,740.41	
Taxes payable	6,728.22	
Interest accrued	3,002.86	
		$934,537.31

Mt. Whitney Power & Electric Company operates in Tulare county and a portion of Kern county. It serves the cities of Visalia, Tulare, Porterville, Lindsay, Exeter, and surrounding territory with light and power. Its lines parallel approximately 70 per cent of the lines of the Tulare company.

In asking for authority to take over the properties of the Tulare company the Mt. Whitney company represents that it is abundantly able to take care of the consumers of the former company. At the present time it has excess power through the medium of a steam plant, and it is planning to construct a new hydroelectric plant, which will still further increase its available supply.

Mt. Whitney Power & Electric Company has an authorized issue of $5,000,000 of first mortgage 6 per cent sinking fund thirty-year gold bonds, dated October 1, 1909, and due October 1, 1939. Of these bonds approximately $2,623,000 are outstanding.

Witness for the company stated that it has practically no floating debt, and that its net earnings to date applicable to bond interest are more than double the amount necessary to pay interest on the present outstanding bonds, and the $440,000 additional bonds which it proposes to issue in case the transfer of the properties is approved.

Negotiations for the purchase of the properties of the Tulare company by the Mt. Whitney company were begun in the latter part of March 1915. After some weeks of negotiation a proposition to sell the properties for the sum of $550,000 was submitted

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to the stockholders of the Tulare company, which proposition was defeated. However, those stockholders who were anxious to sell immediately began another campaign, and at the annual meeting, on June 16, 1915, the proposition was again presented. At this meeting 3,221 shares out of a total of 3,450 shares were represented, and the proposition was unanimously adopted.

The contract under which it is proposed to transfer the properties is dated June 30, 1915. It provides that on August 2, 1915, the Mt. Whitney company will pay the Tulare company $50,000 in gold coin. On that date Mt. Whitney company also agrees to pay, or have released, the following notes due by Tulare County Power Company, all of which have matured:

Payee.	Date.	Term.	Int.	Interest Payable.	Principal.
First National Bank of San Francisco	Nov. 15, '13	6 months	6%	Quarterly ...	$8,000.00
Thomas C. Job	Sept. 22, '13	1 year ..	7%	Semiannually	17,927.40
Thomas C. Job	Sept. 22, '13	1 year ..	7%	Semiannually	666.66
Allis-Chalmers Co.	Oct. 10, '13	1 year ..	7%	Annually ...	3,513.63
Allis-Chalmers Co.	Oct. 10, '13	1 year ..	7%	Semiannually	4,116.67
James M. Hunt	Sept. 22, '13	1 year ..	7%	Semiannually	10,800.00
Westinghouse Electric Mfg. Co.	Sept. 20, '13	8 months	6%	At maturity	1,211.25
Lindsay Nat'l Bank	.....	.....	8%	.....	1,000.00
A. M. Drew	.....	.....	....	.....	793.51
Total	.....	.....	....	.....	$48,029.12

These notes are indorsed by various stockholders of the Tulare company, and the agreement provides that if any of the notes have been paid by their indorsers the money shall be repaid to such indorsers by the Mt. Whitney company.

On or before November 1, 1915, the Mt. Whitney company further agrees to pay the sum of $25,000; on or before February, 1, 1916, the sum of $75,000; on or before May 1, 1916, the sum of $50,000; and on or before August 1, 1916, the difference between $350,000 and the total sum of the foregoing payments, including all unpaid interest to August 2, 1915, on the $200,000 owing to C. J. Wrightsman. The deferred payments on the purchase price are to bear interest at 6 per cent per annum, payable semiannually, and are to be evidenced by four promissory notes dated August 2, 1915. These notes are

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to be secured by pledge of an equal amount of first mortgage bonds of the Mt. Whitney company.

In addition to the payment of $350,000, as above provided, Mt. Whitney Power & Electric Company agrees to assume, on August 2, 1915, the unpaid balance on the indebtedness due C. J. Wrightsman, amounting to $200,000, making a total consideration for the property of $550,000.

Mt. Whitney company also assumes all existing power contracts, and agrees to assume one half of the taxes for 1915. The Tulare company is to retain as of date of transfer cash on hand, bills, and accounts receivable, and notes receivable.

Tulare County Power Company represents that the cost to date of its physical properties is the sum of $475,283.63. In addition it claims to have expended the sum of $119,395.03 in developing its business, and to have issued 2,000 shares of common stock and 1,000 shares of preferred stock in securing certain water rights.

On June 30, 1915, it had 1,053 consumers, and its connected load amounted to 4,665 horse power. Without any further increase in its business, Mr. Holley, secretary and director of the Tulare company, estimated that its gross operating revenue for the next twelve months would amount to $181,285, and its net revenue approximately $56,000. He estimated that the Mt. Whitney company would be able to handle this business at a saving of not less than $25,000 per annum.

Out of the proceeds of the sale and its notes and accounts receivable, the Tulare County Power Company, expects to pay off the outstanding indebtedness upon its properties, other than that assumed by the Mt. Whitney company, and distribute the balance of its assets among its stockholders.

The Tulare County Power Company has heretofore been granted authority to issue stock for the purpose of making a settlement with certain of its creditors. These creditors were represented at the hearing in this matter, and an agreement was reached by which this stock will be issued in satisfaction of the claims of these creditors.

Approximately 90 per cent of the preferred stockholders of the Tulare company have signed agreements, waiving their right to receive par value for their stock, and agreeing to take

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only the 7 per cent interest which has accrued thereon, and to prorate the balance of the proceeds of the sale with the common and consumers stockholders. Mr. Holley, testified that the result of this will be that the preferred stockholders would receive approximately $71 or $72 per share for their holdings, and the common and consumers stockholders approximately $51 or $52 per share.

The deed of transfer provides that all franchises of the Tulare company shall be transferred to the Mt. Whitney company. These franchises are as follows:

The county of Tulare, granted November 7, 1911, term fifty years;
The city of Lindsay, granted March 5, 1911, term fifty years;
The city of Tulare, granted March 18, 1912, term fifty years;
The city of Exeter, granted March 22, 1912, term fifty years.

Each of these franchises provides that after the first five years the company shall pay annually to the grantor 2 per cent of its gross receipts. The original cost of these franchises to the Tulare company is stated to be the sum of $6,513.52.

Covering the same territory Mt. Whitney Power & Electric Company has franchises as follows:

The county of Tulare, granted November 9, 1898, term fifty years.
The city of Tulare, granted November 20, 1899, term fifty years.

Neither of these franchises provide for the payment by the Mt. Whitney company of a proportion of its gross receipts to the grantor.

The franchise from the county of Tulare was granted previous to the incorporation of the cities of Lindsay and Exeter; hence the Mt. Whitney company has no special franchises in these cities.

The bulk of the business of Tulare County Power Company comes from its agricultural load. The company supplies power for purposes of pump irrigation principally in the citrus fruit orchards and alfalfa fields of Tulare county.

Mt. Whitney Power & Electric Company also has an extensive agricultural business in this territory. Naturally a consolidation of the properties of these two companies will result in a duplication of facilities. According to the testimony, Mt. Whitney Power & Electric Company would not have present use for

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the steam plant of the Tulare County Power Company, but would use it as an auxiliary supply.

It is in the testimony further that Mt. Whitney Power & Electric Company would come into possession through the purchase of Tulare County Power Company of power lines serving territory in which the Mt. Whitney Power & Electric Company already possessed ample feeders.

Witnesses for the applicants herein stated that the Mt. Whitney Power & Electric Company would gradually unify these two systems, removing the duplicate lines to new territory now awaiting service.

As a duplicate service of course will continue under the competition as at present existing between these two applicants, such objections as there could now be against the duplication would lie with additional force against the continued increase in this duplication.

It is of course patent as stated frequently in the opinions of this Commission that such investment as has been made beyond the actual needs of the service must in the end be an extra burden either upon the rate payer or the stockholders of one or both of these companies.

Witness for Tulare County Power Company stated that the competitive condition was brought about through the unsatisfactory service of Mt. Whitney Power & Electric Company, which led to the formation of the Tulare County Power Company with several hundred residents of Tulare county, chiefly farmers, as stockholders.

Witness also testified that most of the unsatisfactory features of the service of Mt. Whitney Power & Electric Company which brought the Tulare County Power Company into being had now been eliminated, due to the regulation by the state and the force of competition.

The representative of Tulare County Power Company testified that the consumers whom he represented were now of the opinion that the regulation by the state through this Commission had proved and would prove ample to protect their interests.

I am of the opinion from the evidence in this matter that the Mt. Whitney Power & Electric Company can give full and

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satisfactory service to the present patrons of Tulare County Power Company.

I am of the opinion also that this service can be given with no increase in the rates as now charged against the patrons of Tulare County Power Company, as all of these patrons are now on the same basis, without discrimination in favor of stockholders.

I believe also that the present financial condition of Tulare County Power Company is a critical one, and that there is a very grave question whether it could much longer continue to serve its patrons as they should be served.

It would appear, therefore, that there remains to be considered one other element of importance in this situation, and that is the ability of Mt. Whitney Power & Electric Company to absorb the duplicated facilities without injury either to its patrons or to itself.

It appears from the testimony that the witnesses estimated the gross return which Mt. Whitney company would receive from the Tulare County Power Company's property at a sum ranging from $175,000 to $180,000 per year. The net return is estimated at $80,000 per year. These estimates are based upon the present rates.

It would appear, therefore, that Mt. Whitney Power & Electric Company could set up a special depreciation reserve against those portions of the duplicated properties which could not be removed from their present location and made otherwise serviceable.

This special depreciation reserve should be of such dimensions as to enable Mt. Whitney Power & Electric Company gradually to write off such portions of the Tulare company's plant as cannot economically be welded into its system on an adequate revenue producing basis.

After a consideration of the evidence submitted by the applicants, I am of the opinion that this application should be granted, and I submit the following form of order:

ORDER.

Tulare County Power Company, having applied to this Commission for authority to sell its properties to the Mt. Whitney

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Power & Electric Company, and the latter company having applied to this Commission for authority to purchase the same; and it appearing to this Commission that applicant's request is reasonable and that public convenience will be served by the transfer herein proposed,—

It is hereby ordered that Tulare County Power Company be, and it is hereby, authorized to transfer to Mt. Whitney Power & Electric Company all its property, being the properties more fully described in exhibit "C" attached to the original application, according to the terms of an agreement dated June 30, 1915, a copy of which is attached to the original application herein and marked exhibit "B."

The authority herein granted is granted upon the following conditions, and not otherwise:

1. The price at which the properties of the Tulare County Power Company are transferred to Mt. Whitney Power & Electric Company shall not be binding upon this Commission, or any other public body, as representing the value of said properties for rate-making or other purposes.

2. Tulare County Power Company shall transfer its franchises to Mt. Whitney Power & Electric Company only after Mt. Whitney Power & Electric Company shall have filed with this Commission a statement naming the franchises under which it will henceforth operate, and only after this Commission shall have issued a supplemental order finally approving the transfer of such franchises.

3. Within thirty days from the date of this order, Mt. Whitney Power & Electric Company shall file with this Commission a stipulation to the effect that it does not, and never will, claim in any proceeding before this Commission, or any other public body, a value for the franchises acquired by it from Tulare County Power Company in excess of the actual cost to Tulare County Power Company of acquiring said franchises.

4. The authority herein granted shall apply only to such transfer of property as shall take place on or before December 31, 1915.

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The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Note.—Sales of Public Utility Property.

Sales and purchases of property by public utilities have been authorized in the following cases:

Arizona. In Re Mountain States Teleph. & Teleg. Co. Docket No. 229, April 29, 1915, sale of telephone exchange by the Mountain States Telephone & Telegraph Company to Minor and Grasty; In Re Woods, Docket No. 253, May 10, 1915, sale of telephone line by William B. Woods et al. to Arizona Electric Telephone Company (consolidation); In Re Mountain States Teleph. & Teleg. Co. No. 270, June 23, 1915, sale of iron circuits by Mountain States Telephone & Telegraph Company to the United States government, and to Iron Springs Outing Club.

California. In Re Pacific Electric R. Co. Decision No. 2220, Application No. 1536, March 13, 1915, sale of electric heating and lighting system by Pacific Electric Railway Company to Southern California Edison Company (consolidation); In Re Klamath Teleph. & Teleg. Co. Decision No. 2222, Application No. 988, March 13, 1915, sale of telephone system by Klamath Telephone & Telegraph Company to Joseph Hessig et al.; In Re Pacific Teleph. Co. Decision No. 2224, Application No. 1449, March 13, 1915, sale of telephone system by Weed Lumber Company to Pacific Telephone & Telegraph Company (consolidation); In Re Western U. Teleg. Co. Decision No. 2236, Application No. 1568, March 18, 1915, sale of telegraph line by The Western Union Telegraph Company to Thomas Conlin; In Re Gladora Water Co. Decision No. 2242, Application No. 1509, March 18, 1915, sale of water system by Glendora Water Company to city of Glendora; In Re Kirby, Decision No. 2245, Application No. 1577, March 19, 1915, sale of telephone system by C. M. Kirby to Pacific Telephone & Telegraph Company (consolidation); In Re Lagunitas Development Co. Decision No. 2273, Application No. 1551, April 1, 1915, sale of water system by Lagunitas Development Company to San Geronimo Valley Water Company (consolidation); In Re Patterson, Decision No. 2274, Application No. 1503, April 3, 1915, sale of telephone system by A. F. Patterson to Mrs. J. Guerra; In Re Warren, Decision No. 2274, Application No. 1544, April 3, 1915, sale of telephone system by G. Warren to A. F. Patterson; In Re Spaulding, Decision No. 2308, Application No. 1576, April 20, 1915, sale of water ditch by Rosa S. Spaulding to the Foothill Ditch Company (consolidation); In Re Greendale, Decision No. 2314, Application No. 1631, April 20, 1915, sale of water system by Verdugo Springs

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Water Company to City of Greendale; In Re Mountain Light & Water Co. Decision No. 2328, Application No. 1582, April 24, 1915, sale of waterworks by F. A. Cody to Mountain Light & Water Company (consolidation); In Re Janss Co. Decision No. 2405, Application No. 1603, May 21, 1915, sale of water system by Janss Company to Belvedere Water Company; In Re Parlier Winery Co. Decision No. 2416, Application No. 1530, May 24, 1915, sale of franchises by Parlier Winery Company to River Bend Gas & Water Company; In Re Soledad Land & Water Co. Decision No. 2428, Application No. 1630, May 26, 1915, sale of water utility property by Soledad Land & Water Company to Mission Water Company (consolidation); In Re Fay Water Co. Decision No. 2435, Application No. 1604, May 29, 1915, sale of water system by heirs of estate of Luigi Marre to Fay Water Company; In Re Corcoran, Decision No. 2457, Application No. 1705, June 7, 1915, sale of water and gas system by the Corcoran Gas & Water Company to city of Corcoran; In Re San Francisco, Decision No. 2459, Application No. 1440, June 7, 1915, the Commission approved a transfer of a franchise owned by the Bay Cities Home Telephone Company, permitting the construction and operation of a telephone system in the city and county of San Francisco, to the Pacific Telephone & Telegraph Company, the board of supervisors having passed a restriction approving the transfer, and such resolutions having been approved by the mayor. Commissioner Edgert dissented on the ground that the franchise was obtained through corruption, and that 2 per cent of gross receipts accruing to the city under provisions of the franchise was an insufficient benefit; In Re Stoll, Decision No. 2465, Application No. 1714, June 10, 1915, sale of water system by Edward Stoll to the city of Los Angeles; In Re McCarthy Co. Decision No. 2464, Application No. 1709, June 10, 1915, sale of water system by the McCarthy Company to the city of Los Angeles; In Re McClelland, Decision No. 2474, Application No. 1654, June 14, 1915, sale of a street railway extension by H. A. McClelland & Mercantile Trust Company to Pacific Gas & Electric Company (consolidation); In Re Commonwealth Home Builders, Decision No. 2477, Application No. 1725, June 14, 1915, sale of water system by Commonwealth Home Builders to city of Los Angeles; In Re Packmayr, Decision No. 2481, Application No. 1715, June 14, 1915, sale of water system by Otto Packmayr to the city of Los Angeles; In Re Sanger Teleph. Co. Decision No. 2505, Application No. 1677, June 21, 1915, sale of telephone plant by Sanger Telephone Company to H. F. Knapp.

In Re Orosi Orange Land Co. Decision No. 2637, Application No. 1782, July 28, 1915, sale of domestic water system by Orosi Orange Land Company to Cove Water Company (consolidation); In Re Sierra Valleys R. Co. Decision No. 2659, Application No. 1797, Aug. 3, 1915, sale of the Sierra Valleys Railway by Cora Healy individually and as guardian to the Nevada-California-Oregon Railway;

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In Re Browning, Decision No. 2687, Application No. 1833, Aug. 12, 1915, sale of water system by W. M. Browning to trustee for Belvedere Mutual Association.

Illinois. In Re Central U. Teleph. Co. No. 3515, March 4, 1915, sale of telephone property by receivers of Central Union Telephone Company to Robert Hood; In Re Central U. Teleph. Co. No. 3516, March 4, 1915, sale of telephone property by receivers of Central Union Telephone Company to William P. McNeall; In Re Central U. Teleph. Co. No. 3634, March 18, 1915, sale of telephone system by receivers of Central Union Telephone Company to Union Telephone Company (consolidation); In Re Atchison, T. & S. F. R. Co. No. 3309, March 31, 1915, sale of real estate by Atchison, Topeka, & Santa Fe Railway Company to John P. Ford; In Re Chicago City R. Co. No. 3754, April 22, 1915, sale of real estate by Chicago City Railway Company to Josie Markns; In Re Commonwealth Edison Co. No. 3600, May 6, 1915, sale of electric generating plant by the Northwestern Elevated Railroad Company to the Commonwealth Edison Company (consolidation); In Re Minneapolis & St. L. R. Co. No. 3671, May 6, 1915, sale of railroad by Des Moines & Fort Dodge Railroad Company to the Minneapolis & St. Louis Railroad Company; In Re Grange Teleph. Co. No. 3717, May 6, 1915, sale of telephone system by the Woodstock Mutual Telephone Company to the Grange Telephone Company (consolidation); In Re Cleveland, C. C. & St. L. R. Co. No. 2817, June 3, 1915, sale of land by Cleveland, Cincinnati, Chicago, & St. Louis Railway Company to the Western Cartridge Company; In Re Illinois C. R. Co. No. 3840, June 3, 1915, sale of land by Illinois Central Railroad Company to R. E. Walston; In Re Illinois C. R. Co. No. 3849, June 3, 1915, sale of land of Illinois Central Railroad Company to Robert F. Leesley.

In Re Illinois C. R. Co. No. 3850, June 3, 1915, sale of land by Illinois Central Railroad Company to John J. Scott; In Re Illinois C. R. Co. No. 3851, June 3, 1915, sale of land by Illinois Central Railroad to E. W. Brown; In Re Illinois C. R. Co. No. 3852, June 3, 1915, sale of land by Illinois Central Railroad Company to Ernest Moody; In Re Illinois C. R. Co. No. 3853, June 3, 1915, sale of undivided half interest in land by Illinois Central Railroad Company to Atchison, Topeka, & Santa Fe Railway Company; In Re Illinois C. R. Co. No. 3854, June 3, 1915, sale of land by Illinois Central Railroad Company to Ernest H. Beatty; In Re Eastern Illinois Independent Teleph. Co. No. 3855, June 3, 1915, sale of a one-half interest in a telephone conduit system by the Illinois Independent Telephone Company to the receivers of the Central Union Telephone Company (consolidation); In Re Aurora, E. & C. R. Co. No. 3856, June 3, 1915, authorization for sale of real estate by Aurora, Elgin, & Chicago, Railroad Company; In Re Cleveland, C. C. & St. L.

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R. Co. No. 3883, June 3, 1915, sale of real estate by Cleveland, Cincinnati, Chicago, & St. Louis Railway Company to Marshall Bump; In Re Central Illinois Public Service Co. No. 3819, June 17, 1915, sale of electric light plant by the village of Table Grove to the Central Illinois Public Service Company; In Re Niantic Teleph. Company No. 3872, June 17, 1915, sale of telephone system by Niantic & Harristown Telephone Company to Niantic Telephone Company; In Re Cleveland, C. C. & St. L. R. Co. No. 3893, June 17, 1915, exchange of land by Cleveland, Cincinnati, Chicago, & St. Louis Railroad Company and Job Broster and Samuel Broster; In Re Huston, No. 3708, June 30, 1915, sale of electric light plant by Charles R. Huston to Economy Electric Light & Power Company (consolidation); In Re Baltimore & O. C. Terminal R. Co. No. 3932, June 30, 1915, sale of real estate by the Baltimore & Ohio Chicago Terminal Railway Company to the Chicago Title & Trust Company and James W. Fernald; In Re Illinois C. R. Co. No. 3956, June 30, 1915, sale of real estate by Illinois Central Railroad Company to R. E. Walston; In Re Security Warehouse & Elevator Co. No. 3949, July 8, 1915, sale of elevator plant by Security Warehouse & Elevator Company to Security Elevator Company (consolidation); In Re Chicago & A. R. Co. No. 4034, July 22, 1915, sale of real estate by Chicago & Alton Railroad Company to Riverview Cemetery Association; In Re Chicago & A. R. Co. No. 4035, July 22, 1915, sale of real estate by Chicago & Alton Railroad Company to Harry A. O'Kelly; Re Atchison, T. & S. F. R. Co. No. 4046, July 22, 1915, sale of real estate by the Atchison, Topeka, & Santa Fe Railway Company to Albert Dickinson Company; In Re Illinois C. R. Co. No. 4053, July 22, 1915, sale of real estate by Illinois Central Railroad Company and Atchison, Topeka, & Santa Fe Railroad Company to Albert Dickinson Company; In Re Illinois C. R. Co. No. 4003, Aug. 5, 1915, sale of real estate by the Illinois Central Railroad Company to the Forest City Bit & Tool Company; In Re Illinois C. R. Co. No. 4100, Aug. 19, 1915, sale of land by the Illinois Central Railroad Company to Rockford Tool Company; In Re Illinois C. R. Co. No. 3796, Aug. 19, 1915, sale of land by the Illinois Central Railroad Company to the Old Colony Chair Company; In Re Grange Teleph. Co. No. 3907, Sept. 3, 1915, sale of telephone system by the Grange Telephone Company to the Schuyler Telephone Company (consolidation); In Re Leef and Vanden Broeck, No. 4189, Sept. 2, 1915, sale of telephone plant by Leef and Vanden Broeck, proprietors of Alhambra Telephone Company to Alhambra Mutual Telephone Company (consolidation).

Indiana. In Re United Public Service Co. No. 1395, April 6, 1915, sale of water, light, and power system by Union Water, Light, & Power Company to United Public Service Company (consolidation); In Re Cumberland Teleph. & Teleg. Co. No. 1248 and No.

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1447, April 23, 1915, sale of telephone system by the Cumberland Telephone & Telegraph Company to the Southern Telephone Company of Indiana, a corporation organized by permission of the Commission for that purpose; In Re the Talma Teleph. Co. No. 1416, May 3, 1915, sale of telephone system by Talma Telephone Company to Ella Jameson; In Re Noblesville Heat Light & P. Co. No. 1535, May 21, 1915, sale of electric light and power plant by the Cicero Light & Power Company to the Noblesville Heat, Light, & Power Company; In Re Cicero Light & P. Co. No. 1536, May 21, 1915, sale of electric light and power plant by Cicero Light & Power Company to Noblesville Heat, Light, & Power Company (consolidation); In Re Ashley, No. 1557, June 4, 1915, sale of electric light and power system by the town of Ashley to the Indiana Utilities Company; In Re Indiana Utilities Co. No. 1558, June 4, 1915, sale of remaining property of a burned electric lighting system by the town of Ashley to Indiana Utilities Company; In Re People's Teleph. Asso. No. 1636, July 17, 1915, sale of telephone system by People's Telephone Association of Indiana to Southern Indiana Telephone Company (consolidation).

Maine. In Re Wardwell U-34, June 10, 1915, sale of water power and electric lighting plant by Leon A. Wardwell and George C. Webber to the Turner Light & Power Company; In Re Warren, U-39, June 25, 1915, sale of electric light and power plant by S. D. Warren & Company to the Westbrook Electric Company; In Re Huse Spool & Bobbin Co. U-49, Aug. 5, 1915, sale of electric lighting system by Huse Spool & Bobbin Company, to Kingfield Light Company.

Massachusetts. In Re Springfield Gaslight Co. May 6, 1915, sale of gas plant by South Hadley Gas Company to the Springfield Gaslight Company (consolidation).

Michigan. In Re Michigan State Teleph. Co. D-915, April 27, 1915, sale of telephone plant by Michigan State Telephone Company to Allen Mutual Telephone Company (consolidation); In Re Michigan State Teleph. Co. D-939, July 8, 1915, sale of telephone property by the Michigan State Telephone Company to the Lenawee County Telephone Company (consolidation); In Re Michigan State Teleph. Co. D-953, Aug. 10, 1915, sale of telephone system by John T. Edwards to Michigan State Telephone Company (consolidation).

Missouri. In Re Southwestern Teleg. & Teleph. Co. Case No. 592, Jan. 16, 1915, sale of telephone system by the Southwestern Telegraph & Telephone Company to Macon Telephone Company (consolidation); In Re Banta, Case No. 593, Jan. 16, 1915, sale of telephone system by I. W. Banta to T. S. Jackson; In Re Winston, Case No. 604, Jan. 30, 1915, sale of telephone system by Mary P. Winston to Haston Allen.

New Hampshire. In Re Lincoln, No. 423, Feb. 19, 1915, sale

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of telephone system by New England Telephone & Telegraph Company to George W. Lincoln; In Re Taylor, D-275, June 12, 1915, sale of water system by Henry L. Bowles to George F. Taylor; In Re Canaan Electric Co. D-193, June 30, 1915, sale of electric plant by American Woolen Company to Canaan Electric Company; In Re Meredith Electric Light Co. D-273, July 7, 1915, sale of electric light and power plant by the Center Harbor Electric Company to Meredith Electric Company.

New Jersey. In Re Wildwood Waterworks Co. June 4, 1915, sale of waterworks by Wildwood Waterworks Company to the city of Wildwood.

Ohio. In Re Mahoning County Light Co. No. 304, Jan. 5, 1915, sale of steam heating system from the Youngstown Heating Company to the Mahoning County Light Company (consolidation); In Re Payne Home Teleph. Co. No. 429, Feb. 9, 1915, sale of telephone system by trustees of Payne Home Telephone Company to Sarah A. McHenry; In Re Buckeye Pipe Line Co. No. 448, March 1, 1915, sale of pipe line by the Buckeye Pipe Line Company to the River Gas Company (consolidation); In Re Ohio State Teleph. Co. No. 437, March 4, 1915, sale of telephone system by the Akron People's Telephone Company, to the Ohio State Telephone Company (consolidation); In Re Farmers Tri County Teleph. Co. No. 447, March 22, 1915, sale of telephone system by Farmers Tri County Telephone Company to receivers of the Central Union Telephone Company (consolidation); In Re Windsor Teleph. Co. No. 459, April 20, 1915, sale of telephone property by the Jefferson & Warren Telephone Company to the Windsor Telephone Company (consolidation); In Re Parkman Teleph. Co. No. 445, April 30, 1915, sale of telephone lines by the Burton Telephone Company to the Parkman Telephone Company (consolidation); In Re Defiance Gas & Electric Co. No. 479, May 1, 1915, sale of undivided half interest in electric transmission system by the Auglaiza Power Company to the Defiance Gas & Electric Company (consolidation); In Re Valley Light & P. Co. No. 483, May 1, 1915, sale of electric light and power plant by the Valley Light & Power Company to the Defiance Gas & Electric Company (consolidation); In Re Buckeye Pipe Line Co. No. 482, May 4, 1915, sale of telephone poles by the Buckeye Pipe Line Company to the Central District Telephone Company; In Re Athens Electric Co. No. 485, May 17, 1915, sale of electric lighting system by Francke C. Elliot, trustee to Athens Electric Company (consolidation); In Re Springfield Gas Co. No. 511, May 17, 1915, sale of entire issue of its capital stock by the Springfield Gas, Coke, & Pipe Line Company to Springfield Gas Company; In Re Forgan, No. 491, May 21, 1915, sale of telephone system by receivers of the New Castle Telephone Company to receivers of the Central Union Telephone Company (consolida-

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tion); In Re Miami Light, Heat, & Power Co. No. 476, May 24, 1915, sale of electric light and power system by the Miami Light, Heat, & Power Company to the Dayton Power & Light Company (consolidation); In Re Central Dist. Teleph. Co. No. 505, May 25, 1915, permission granted to the Central District Telephone Company to purchase and acquire all the issued and outstanding capital stock of the Washington Telephone Company, the Jefferson Telephone Company, the Belmont Telephone Company, the Union Telephone Company, the Woodsfield Telephone Company (consolidation); In Re Farmers Teleph. Co. No. 498, June 16, 1915, sale of telephone system by the Farmers Telephone Company to the West Jefferson Home Telephone Company (consolidation); In Re Delphos Gas Co. No. 488, June 24, 1915, sale of gas plant by the Delphos Gas Company, incorporated 1911, to the Delphos Gas Company, incorporated 1913; In Re Western Ohio R. Co. No. 544, June 30, 1915, sale of electric generating and railway properties and leases thereof by the Western Ohio Railroad Company to the Standard Power & Equipment Company and the Western Ohio Railway Company (consolidation); In Re Montpelier Teleph. Co. No. 540, July 6, 1915, sale of capital stock of the Montpelier Telephone Company to the Bryan Telephone Company; In Re Alverdton Teleph. Co. No. 549, July 6, 1915, sale of telephone plant by the Alverdton Telephone Company to the Bryan Telephone Company (consolidation); In Re Ohio Fuel Supply Co. No. 451, July 8, 1915, sale of natural gas transmission line by the Northwestern Ohio Natural Gas Company to the Ohio Fuel Supply Company (consolidation); In Re Strasburg Electric Co. No. 552, July 8, 1915, sale of electric light and power plant by the Strasburg Electric Company to the Ohio Service Company (consolidation); In Re Oldaker, No. 560, July 8, 1915, sale of a telephone exchange by J. S. Oldaker to C. G. Hopkins; In Re Summerfield Gas Co. No. 453, July 9, 1915, sale of gas plant by the Summerfield Gas Company to the Noble Fuel Supply Company (consolidation); In Re Lloyd, No. 566, July 15, 1915, sale of railway plant, property, and franchises by Horatio G. Lloyd et al., to the Stubenville Railway Company; In Re Tri-County Teleph. Co. No. 556, July 16, 1915, sale of telephone system by the Tri-County Telephone Company to receivers of the Central Union Telephone Company (consolidation); In Re Ohio Gaslight & Coke Co. No. 548, July 20, 1915, sale of electric lighting plant by H. J. Sloan et al., to the Ohio Gas, Light, & Coke Company (consolidation); In Re Fairfield Twp. Mut. Teleph. Co. No. 557, July 20, 1915, sale of telephone system by Fairfield Township Mutual Telephone Company to Fairfield Township Telephone Company (consolidation); In Re Mutual Electric Co. No. 502, July 21, 1915, sale of electric lighting system by Francke C. Elliott, trustee to the Mutual Electric Company (consolidation); In Re Central Dist.

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Teleph. Co. No. 569, July 27, 1915, sale of electric wire circuit by the Central District Telephone Company to the Maple Grove Telephone Company; In Re Delphos Electric Light & P. Co. No. 525, Aug. 24, 1915, sale of electric lighting plant by the Delphos Electric Light & Power Company to the Northwestern Ohio Light Company (consolidation); In Re Van Wert Public Service Co. No. 526, Aug. 24, 1915, sale of electric lighting plant by the Van Wert Public Service Company to the Northwestern Ohio Light Company (consolidation); In Re Cottingham, No. 528, Aug. 24, 1915, sale of electric lighting plant by J. W. Cottingham to the Northwestern Ohio Light Company (consolidation); In Re Cottingham, No. 527, Aug. 24, 1915, sale of electric lighting plant by Summer Cottingham to the Northwestern Ohio Light Company (consolidation); In Re Urbana Light Co. No. 529, Aug. 24, 1915, sale of electric lighting plant by the Urbana Light Company to the Northwestern Ohio Light Company (consolidation); In Re Roseville Oil & Gas Co. No. 599, Sept. 10, 1915, sale of gas properties by the Roseville Oil & Gas Company to George P. Wasmuth et al.; In Re Marlatt, No. 592, Sept. 11, 1915, sale of telephone pole line by David R. Forgan et al., receivers of Central Union Telephone Company, to H. E. Marlatt.

Oklahoma. In Re Oil Belt Terminal R. Co. Cause No. 2239, Order No. 901, Feb. 11, 1915, sale of right of way by Oil Belt Terminal Railway Company to St. Louis & San Francisco Railroad Company.

Pennsylvania. In Re East Penn Gaslight Co. Application Docket No. 189, 1915, May 20, 1915, proposed merger and consolidation of East Penn Gaslight Company, Macungie Gas Company, Macungie Gas & Fuel Company, Perkiomen Gas & Fuel Company, and the Fleetwood Gas & Fuel Company. Approved.

CALIFORNIA RAILROAD COMMISSION.

IN RE HAYWARD WATER COMPANY.

[Decision No. 2643; Application No. 1747.]

Valuation — Abandoned pumping plant used as material yard.

1. The value of an abandoned pumping plant used by a water company as a material yard was allowed in the valuation of the property of a company for rate-making purposes, where the company could not supply other storage facilities at less cost.

Valuation — Unused service connections.

2. Unused service connections of a water company laid in a street before paving at the request of the city should be included in the valuation of the plant for rate-making purposes.

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Valuation — Indebtedness.

3. Indebtedness of a company cannot be included in the value of its property for rate-making purposes where the property covered thereby has already been included in the valuation.

Valuation — Going value.

4. In the valuation of the property of a waterworks company for rate-making purposes, the property was valued as a going concern, but no separate allowance was made for going value.

Valuation — Working capital.

5. Funds necessarily kept out of use for working capital are properly included in the valuation of the property of a water company for rate-making purposes, but where the cash balance of the company was $43.20 on January 1, 1914, $91.90 on January 1, 1915, and $899.25 on June 15, 1915, it was held that the sum of $3,000 was in excess of the average working capital withheld from use by the company.

Return — Water company — Percentage.

6. A water company was permitted to so increase its rates that when the change from a flat-rate to a meter-rate system, as ordered, was completed, the return upon its investment under proper management would reasonably be expected to be 8 per cent per annum.

[July 30, 1915.]

APPLICATION to increase water rates; granted upon completion of a certain improvement in service as ordered; the sum of $110,000 fixed as the amount upon which the company should be entitled to earn a return. The rates established are set forth in the order.

Appearances: Pillsbury, Madison, and Sutro, by Oscar Sutro, for applicant; Frank Mitchell, Jr., for the town of Hayward.

Loveland, Commissioner: The application of the Hayward Water Company recites that applicant is operating a water system for the supply of water for domestic and other purposes in and in the vicinity of Hayward, Alameda county, and that the returns now being received from all consumers are inadequate for the payment of running expenses, and establishment of a depreciation fund, and a return on the investment in the system.

Under its articles of incorporation the utility company has an authorized capitalization of 2,000 shares of common stock at $100 par value. The order of the Railroad Commission in proceeding under application No. 1175, gave authority for the issuance of 1,280 shares of capital stock. There is no preferred stock and no outstanding indebtedness of any sort.

It is stated that no dividends have been paid from the op-

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eration of this property during the five years immediately preceding the filing of the application. Attached to the application were exhibits setting forth the amounts shown on the books of the company, as to earnings and expenditures for the year 1914 and for the first five months of 1915, and a detailed estimate to the amounts which the officials of the company consider necessary for operation of the system during the coming twelve months' period. There is also set forth a tabulation of the flat and meter rates now established by the ordinance of the town trustees of Hayward, which went into effect January 1, 1909, and remain unchanged, and the rates which the company desires to have established. The flat rates, or rates for unmetered use of water, now in effect are listed in fifty sections.

Ordinary domestic use rates are as follows:

Each family of 1 person	$0.65
Each family of 2 to 4 persons	1.25
Each family of 5 to 6 persons	1.55
Each family of 7 to 8 persons	1.90

There are the various additional charges customary with this form of rate, and higher charges monthly for use in schoolhouses, business places, offices, etc., in accordance with the usual empirical methods of varying such charges.

Rental, for fire hydrants on 6-inch mains, is placed at $4 per month, and on smaller mains at $2.75 per month. Meter rates are 30 cents per 100 cubic feet. Water used by the town of Hayward for sprinkling streets, etc., is paid for at the rate of 12½ cents per 700 gallons, the equivalent of 13⅓ cents per 100 cubic feet. The applicant requests an increase of approximately 58 per cent over the foregoing rates.

The rate for metered water asked by the applicant is 45 cents per 100 cubic feet.

In support of its application for an increase the company relied upon its statements of account and the estimate of its officials in the matter of maintenance and operation expense, and upon the Commission's decision No. 2255, in the application of this company to issue stock. That decision uses $101,372 as the value of the property of this company, presuming the transfer then authorized to have been consummated. The amount properly to be received and set aside annually to meet necessary

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replacement expense is accepted by the company at the figure used by the Commission's engineers when testifying in application No. 1175, and that amount, $3,565, will, therefore, be accepted herein.

[1, 2] Two items of value were questioned at the hearing in this application,—the site of abandoned pumping plant, value $1,960, and unused service connections, valued at $1,209. It was developed in testimony that the former is used as a material yard, and that probably the company could not provide other facilities at a less cost, and that the services were installed at the request of the town authorities, preliminary to paving streets. Therefore, these items are properly to be allowed.

Attorney for applicant claimed that further allowance should be made as follows:

Going value	$6,000.00
Organization and legal expense	3,000.00
Working capital	3,000.00
Indebtedness of San Lorenzo Water Co., assumed	2,000.00
Total	$14,000.00

[3, 4] The indebtedness of the San Lorenzo Water Company can hardly be considered an addition to value, particularly as all property items were included in the estimates discussed in decision No. 2255, before referred to. In the hearing of application No. 1175, Mr. Dillman, engineer for the water company, claimed there should be a going concern value of $20,000. In the present application, going concern value of $6,000 is asked for. There have been decisions of courts which have recognized going value, and, the latest decisions seem to favor valuing a utility as it is found without a specified separate finding as to going value,—that is what I have endeavored to do in this case.

[5] Organization and legal expense is, to a large extent, covered by the overhead allowances included in engineers' estimates. Working capital, however, to such an extent as it is found necessary to keep funds out of use, should be provided for, and will be given consideration in recommending rates to be established. It is to be noted that exhibits A and B, attached to the application, show that on January 1, 1914, there was a cash balance of $43.20, on January 1, 1915, $91.90, and on June 1, 1915, $899.85. It therefore appears that $3,000 is somewhat

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in excess of the average working capital withheld from use by the company. I find the amount upon which the consumers of this utility should pay returns to be $110,000.

In the determination of reasonable maintenance and operation expense of this system, the Commission has available the exhibits of applicant, before referred to, an analysis of operating expenses for years 1913 and 1914, and a statement of operating expenses and revenues for several years, including and preceding 1913, prepared by the Commission's auditing department, and the estimate of the Commission's hydraulic engineer. There is a considerable variance in the amounts set forth in the various statements of the actual past expenditures. The expense of 1913 was $15,053, and of 1914, $13,260, according to Mr. R. A. Pabst, who prepared one of the auditor's exhibits. The exhibits accompanying the application show the expense for 1914 to have been $14,255. In each of these the rental payment for the plant has been eliminated, as has, from the company's statement for 1914, account of back rent, amounting to $2,000, and back taxes, amounting to $449. Rental payment, or as Mr. Pabst classes it, lease of system and interest on deferred payments, is stated by him for 1913, $3,310.35, and for 1914, $3,310.46, while the company in its application states the payment for 1914 to have been $3,150. This, however, is of no importance as a measure of proper future returns, the property now having been transferred from the San Lorenzo Water Company to the Hayward Water Company.

The company's statement of expense for the first five months of 1915 totals $6,763.35, of which $1,312.50 is payment for "lease of other plant," leaving the comparable amount $5,450.85. The Commission's hydraulic engineer presented an estimate totaling $16,075, which he considered properly applicable should the company not change its form of rates from a flat to a metered basis, while the company claimed as the amount that should be allowed, $20,482.21. This, apparently, the company considered justified in part by its statement that disbursements in 1914 amounted to nearly an equal sum, but neglected to call attention to the fact set forth above, that the items of rent, back rent and back taxes, totaling $5,599, cannot be considered the operating expense likely to recur each year under the present ownership.

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The estimate of the company, being so greatly in excess of the actual expense that has been incurred in the past, makes it unnecessary to give it detailed consideration.

The greatest difference between this estimate and that of the Commission's engineers is in the matter of repairs and general expense. For repairs, in the estimate presented by Mr. R. W. Hawley for the Commission's engineering department, is allowed $1,000, while the company claimed $2,702. The average of several recent years is somewhat under $1,000, and it therefore seems unnecessary to provide any greater sum, particularly, if an allowance is made for an adequate depreciation fund. Mr. Hawley estimates $5,600 for general operating expense, as against $8,406, which the company states it requires. Comparable amounts expended in 1913 and 1914, respectively, are $2,550 and $4,048.

The company insists that it now must provide for:

President	$200.00 per month
Secretary	100.00 per month
Legal retainer	50.00 per month
Consulting engineer	100.00 per month

Mr. Hawley provides:

Manager and superintendent	$1,200.00 per annum
Legal and engineering retainers	1,200.00 per annum
Directors' fees	150.00 per annum
Commercial expense	1,200.00 per annum

The last two items provided by Mr. Hawley are not provided for by the company in their estimate. With the limited operations of this company it does not seem necessary to provide for a separate office in San Francisco, as has been requested, and compared with the many other similar concerns whose affairs have come before this Commission for consideration, it appears that the amounts provided for in maintenance and operation, by the Commission's engineers, are liberal.

An estimate was also presented purporting to show that if meters were installed on all services, the increased cost per annum would be $1,200, and the parallel decrease in cost, due to the reduction in the water pumped, would be $1,735. This reduction includes the reduction in force, by eliminating one man at the pumping plant. The company objected strenuously, and while admitting that the amount of water pumped would be

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decidedly decreased, and that great improvement in service would be gained thereby, refused to admit that there would be any less expense in operating the system.

Records in the testimony show that about 26,000,000 cubic feet of water was pumped during 1914, and the company does not attack the estimate of the Commission's engineer, that there will be a reduction in pumpage of some 11,000,000 cubic feet, or about 42 per cent reduction. It does not appear unreasonable to presume that one of the three men now employed would, under such conditions, be unnecessary, and that an estimated reduction of one quarter the fuel and supplies and repairs at the pumping plant is liberal to the utility.

It appears reasonable to presume that if rates are so established as to properly allow for operation of the system under present conditions, that the same rates would be adequate with meters installed, and the water actually paid for by measurement. It has been found that where water is pumped, or otherwise causes expense directly proportional to the amount consumed, that flat rates are entirely unjust and unsatisfactory. This is true as regards the relation of consumer and utility, but even more is it apparent as between the various consumers. The man who conserves the supply very possibly is being penalized instead of being rewarded.

Immediately preceding hearing in this matter, the complaint of the town of Hayward against the San Lorenzo Water Company (Hayward Water Company), was given hearing, and reference to the decision in that matter is made hereby. It was clearly established in that proceeding that a number of consumers are often without water during the summer months, and that pressure and carrying capacity of the mains has been found at times inadequate for proper fire protection. The company claims that this is due to the excessive periodical use by the consumers when under no restraint. In the hearing of this application, the Hayward Water Company evinced not only a desire, but the intention, of metering this system as rapidly as possible. In view of that fact, I shall recommend that the present flat rates remain in effect pending the metering of the system.

The records appear to show that there will necessarily be some increase in the aggregate returns to provide for the adequate

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service which will undoubtedly be demanded of this company, and I will endeavor to establish such a rate for measured water as will be just and equitable. The trial rate used by the Commission's engineers, and presented in testimony, applied upon the estimated total use of 15,000,000 cubic feet, apparently would provide a return of about $34,000, whereas $20,000 is sufficient to provide for maintenance and operation and depreciation. The remaining $14,000 at 7 per cent would provide an investment of $200,000. The rate herein established is somewhat lower, and applying this rate against the estimate in testimony of amounts of water that will be used, it seems assured that the gross annual return will be $30,000, approximately.

In the decision in case No. 445, the Hayward Water Company is directed to make certain improvements in its installation, and to install meters for its consumers with due diligence. It is thought that the installation of a 6-inch main pipe line on C street between Third and Fifth streets, and a 4-inch main pipe line on C street between Fifth and Sixth streets, will correct the inefficiency in the service of the company now complained of, and the company is given sixty days within which time to make such installation. The rates herein provided will therefore become effective upon the completion of the installation of the 6-inch and the 4-inch mains on C street, as provided in the decision in Case 445, supra.

[6] From the records and testimony, it appears that the company has in the past, and may reasonably have expected in the future, to realize a gross annual income of about $20,000. The company claims that this means an absolute deficit or failure to pay operating expenses. The Commission believes that some economies in operation, as set forth herein, may be put into effect, and that, with the metering of the system and the reduction of expenses suggested by the Commission herein, the rates herein provided will increase the annual income by about $10,000, which will enable it to pay operating expenses, provide a reasonable sum for depreciation, and realize a fair return upon its investment of 8 per cent per annum.

Attention is called to the fact that this order provides for almost an entire change from a rate based upon the extent of the consumer's family, premises, buildings, etc., to a rate by measur-

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ing of the water used, and that therefore the result is problematic. If the rate be found to provide results deviating largely, there must, of course, be a future revision.

I recommend the following form of order:

ORDER

Hayward Water Company having made application to increase its rates, and a public hearing having been conducted in the matter, and the Commission being fully informed in the premises, it is hereby found as a fact that the present rates are unjust and inequitable, and that the rates set forth in the following order are just and equitable rates, and basing this order upon the foregoing finding of fact and the further findings of fact set out in the opinion preceding this order,—

It is hereby ordered that the rates to be charged by the Hayward Water Company shall be as follows:

General use—monthly.

Minimum payment for first 300 cu. ft.	$1.00
Payment for use between 300 cu. ft. and 5,000 cu. ft.	.25 per 100 cu. ft.
Payment for all use in excess of 5,000 feet	.15 per 100 cu. ft.
Flat rates, as now legally established on file with the Commission.	

Public use.

Street sprinkling and sewer flushing	$0.15 per 100 cu. ft.
Fire service—for number of hydrants in service July 1, 1914	200.00 per month
Additional hydrants	1.00 per month
All other public use at general rates.	

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Note.—In Hayward v. San Lorenzo Water Co. Decision No. 2635, Case No. 445, decided by the California Railroad Commission, July 24, 1915, and referred to in the opinion of the above case, the water company was ordered to install a meter system, and certain larger and additional pipes, to secure a more adequate service to the city and to its inhabitants.

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CALIFORNIA RAILROAD COMMISSION.

IN RE GREAT WESTERN POWER COMPANY.

[Decision No. 2652; Application No. 1767.]

Monopoly and competition — Admission to occupied field — Insufficiency of plant of occupying company.

An electric company not able to construct a sufficiently large installation to furnish power required in its territory will not be protected against the entrance into the field, of another company able to supply such service.

[August 2, 1915.]

APPLICATION for an order preliminary to the issuance of a certificate of public convenience and necessity for the exercise of certain rights under a franchise to be granted applicant by the County of Plumas and for a certificate of public convenience and necessity for the construction of a certain electric power line in the County of Plumas; granted.

Appearances: Chaffee Hall for Great Western Power Company; Curtiss Hillyer for Plumas Light & Power Company.

Devlin, Commissioner: This is an application by Great Western Power Company for an order preliminary to the issue of a certificate of public convenience and necessity for the exercise of certain rights under a franchise to be hereafter granted by the county of Plumas, and for a certificate of public convenience and necessity for the construction of an electric power line in Plumas county.

This is an application in effect for a preliminary order, authorizing Great Western Power Company to construct a 22,000-volt transmission line from Big Meadows to Engels Copper Mining Company mine in Plumas county, and for authority to sell electric energy to Engels Copper Mining Company, under a franchise to be hereafter granted by Plumas county.

In 1911 applicant constructed a hydroelectric plant, with an installed capacity of 800-horse power at Butte Valley, Plumas county. The capacity of the plant may be increased to 1,500-horse power. The plant was constructed to generate electric energy used in connection with the construction of the dam at Big

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Meadows. Between the dam and the Butte Valley plant, a distance of 6 miles, applicant has constructed a three-phase transmission line. Since the completion of the Big Meadows dam the Butte Valley plant has not been operated, except for the purpose of lighting a few dwellings at the dam. It is now proposed to operate this plant and sell the electric energy to Engels Copper Mining Company, according to the terms of a contract dated July 1, 1915.

Great Western Power Company has no transmission line between the Big Meadows dam and the mine owned by Engels Copper Mining Company. The distance between the two is approximately 30 miles. The cost of constructing the line is estimated at $40,000.

Under the terms of the contract dated July 1, 1915, Great Western Power Company has forty days within which to complete the line.

Engels Copper Mining Company has agreed to purchase and pay for a minimum of 450-horse power. The power company has given an option to the mining company to purchase an additional 600-horse power on or before January 1, 1916. Upon giving ninety days' notice, the power company agrees to supply the mining company with a maximum of 1,500-horse power.

On July 7, 1915, Great Western Power Company applied to the board of supervisors of Plumas county for a franchise to construct, operate, and maintain electrical transmission and distribution lines along and across the public highways of Plumas county. The franchise applied for is to be sold to the highest bidder on September 8, 1915. It is, of course, apparent that until applicant has obtained a franchise, no final order can be issued in this proceeding. Morever, any order which may be issued at this time is only preliminary and conditioned upon the approval of the franchise to be obtained by Great Western Power Company from Plumas county.

The granting of this application is opposed by Plumas Light & Power Company. This company owns a 40-horse power electric plant located at Greenville. It serves the towns of Greenville, Crescent Mills, Taylorsville, the Indian school, and some of the intervening territory, all in Plumas county. Its plant is at present operated at its full capacity.

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Plumas Light & Power Company proposes to enlarge its plant. In its report, marked exhibit "A," it reports the cost of installing a 750-horse power plant at $49,120.17. The cost of installing this plant includes the cost of a 13,200 volt transmission line from the proposed power plant to the mine of Engels Copper Mining Company. Engineer for protestant estimated that it would require three months, after the delivery of the material, to construct the plant. Applicant, on the other hand, reports that it can construct the proposed transmission line within thirty days. A representative of the Engels Copper Mining Company testified that it employed 150 men; that its needs for power were urgent, and that, unless it could be secured within a short time, the company would have to enlarge its steam or gas engine plant.

It is important in this proceeding to consider the position of Plumas Light & Power Company. This company and its predecessor, Indian Valley Light & Power Company, has at various times appeared before the Commission for authority to issue stocks and bonds.

On March 3, 1915, this Commission in decision No. 2192 denied without prejudice the application of Plumas Light & Power Company for authority to issue $52,000 face value of bonds. In passing on this application, the Commission said: There are two elements in this general situation, which appear to render it unwise to authorize at this time the bond issue as applied for. The first difficulty is the pending litigation over the water rights claimed by Round Valley Water Company. The lease of Plumas Light & Power Company of these properties gives it the option of purchase, but I believe it of doubtful wisdom for this applicant to proceed with the construction of a hydroelectric plant, with titles in controversy, as in this instance, and particularly when we are informed that a decision may soon be expected in this matter. The second element in this situation to which I have referred relates to the determination of which is the more feasible of two plans for the Plumas Light & Power Company to pursue. It may, as it here proposes, construct its own hydroelectric plant, and serve the territory which it has mapped out for itself. It may be possible also for this company to construct a transmission line from Greenville to Big Meadows, as it proposed in application No. 1136, to connect with the Great

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Western Power Company. From the evidence at hand, I am not satisfied that the plan herein proposed is the more practical and beneficial from all points of view.

Plumas Light & Power Company reports that the litigation referred to in the former opinion of the Commission had been decided in favor of Mr. Bidwell of Round Valley Water Company, but that a motion for a new trial has been filed. Both plaintiff and defendant have agreed to dismiss the litigation, provided this application of Great Western Power Company is denied. The litigation being adjusted, protestant hopes to find a ready market for its bonds if authorized by this Commission. Assuming that such were the case, it would require several weeks before the protestant could begin construction work upon its proposed 750-horse power plant.

According to the contract between Great Western Power Company and Engels Copper Mining Company, the latter has agreed to pay for a minimum of 450-horse power. The power company has obligated itself to furnish a maximum of 1,500-horse power. Assuming that protestant were able to finance the construction of its proposed plant, it is by no means certain that the plant would have a sufficiently large installation to furnish the power required by Engels Copper Mining Company, the towns of Taylorsville, Crescent Mills, Greenville, and adjacent territory, including Indian Valley. It is, of course, self-evident that a public utility cannot expect this Commission to protect it in its territory, unless such public utility can demonstrate that it is or will be able to give adequate and sufficient service at reasonable rates to that territory.

I find no logical reason why Great Western Power Company should not be permitted to construct the proposed transmission line and sell electric energy to Engels Copper Mining Company. Before supplying any other consumer in Plumas county with electric energy, Great Western Power Company shall obtain a supplemental order from this Commission.

In this proceeding, Great Western Power Company has asked for authority merely to serve Engels Copper Mining Company. The approval herein given, therefore, has in contemplation a final order which would permit Great Western Power Company to sell electric energy, under the terms of the proposed Plumas

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county franchise, to the Engels Copper Mining Company only. If Great Western Power Company should subsequently desire to take on additional consumers in Plumas county, it will be necessary to make a separate application therefor. The effect, therefore, as far as this proceeding is concerned, will be a preliminary order granting authority to Great Western Power Company to serve Engels Copper Mining Company. This portion of Plumas county is not now served by Plumas Light & Power Company.

Note.—Franchises and permits, certificates of public convenience and necessity, and orders relating to the extension of facilities.

1. ***Franchises and permits, creation.***

Electric transmission lines and poles.

Franchises were granted to build and operate transmission lines in the following cases:

Iowa. Centerville Light & P. Co. v. Appanoose County, Docket E-158, June 4, 1915, franchise for twenty-five years to Centerville Light & Traction Company for a line in Appanoose county between Centerville and Cincinnati and between Centerville and Exline, along public highways and over certain private property, together with the right of eminent domain where necessary to acquire the right of way.

Dodge's Point Transp. Co. v. Cerro Gordo County, Docket E-154, May 11, 1915, franchise for twenty years to Dodge's Point Transportation Company for a line in Cerro Gordo county between Clear Lake and Dodge's Point Park.

Eastern Iowa Electric Co. v. Dubuque County, Docket E-152, July 30, 1915, franchise for twenty-five years to Eastern Iowa Electric Company for a line in Dubuque county between Dubuque and Dyersville, along public highways and over certain private property, together with the right of eminent domain where necessary to acquire the right of way.

Eaton v. Decatur County, Docket E-155, May 11, 1915, franchise for twenty years to O. F. Eaton for lines in Decatur county between a certain point on a public highway to Weldon, and between another point and Van Wert.

Elwood v. Howard & Chickasaw County, Docket E-163, July 30, 1915, franchises for twenty-five years to town of Alta Vista for a line between Alta Vista, Chickasaw county, to Elma, Howard county.

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North Star Electric Co. v. Storey County, File E-161, July 30, 1915, franchise for twenty-five years to North Star Electric Company for a line in Storey county between Ames and the residence of George Meyers along public highways and over private property, together with the right of eminent domain where necessary to acquire the right of way.

Peterson Power & Mill. Co. v. Clay County, Docket E-160, June 12, 1915, franchise for twenty years for a line in Clay county between a certain point on a public highway and Everly, and between certain other described points on public highways.

Steinhauer v. Carroll County Docket E-150, March 19, 1915, franchise for twenty-five years to G. O. Steinhauer for a line in Carroll county between West Side and Arcadia.

Vermont. In Re Hardwich, No. 326, Feb. 10, 1915, a permit was granted to the village of Hardwich to erect poles along the public highway from Hardwich through Woodbury to South Woodbury and Sabin Pond, conditioned that a franchise to so occupy the highway be obtained from town selectmen.

Telephones.

Minnesota. In Re Tri State Teleph. & Teleg. Co. Aug. 18, 1915, an indeterminate permit was granted to the Tri State Telephone & Telegraph Company to operate a local telephone exchange in Thief River Falls.

Water.

Indiana. In Re Topeka Water Co. No. 1704, Aug. 11, 1915, a franchise contract between the town of Topeka and the Topeka Water Company was approved, granting the right to the utility for a term of twenty-five years to construct and operate a waterworks system in the city, and to lay mains in the streets, and requiring the installation of a certain number of fire hydrants for which the city is to pay a specified annual rental.

Surrender.

Indiana. Franchises were surrendered in the following cases pursuant to Laws of 1913, chap. 76, § 101, in order that the utilities might receive in lieu thereof, by operation of law, indeterminate permits.

In Re Cayuga Electric Co. No. 1294, Feb. 12, 1915, a franchise granted to A. M. Searles by town of Cayuga, surrendered by Cayuga Electric Company, assignee.

In Re Fuel Gas Co. No. 1355, March 4, 1915, a franchise granted to Fuel Gas Company by town of Hope.

In Re Indiana Utilities Co. No. 964, Feb. 27, 1915, an electric light franchise granted to J. Edward Waugh by town of Angola, a

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street railway franchise granted to Angola Railway & Power Company by town of Angola; waterworks and electric light franchises granted to William J. Vesey by town of Waterloo; and an electric light franchise granted to E. J. Condon and others by town of Hudson—were all surrendered by Indiana Utilities Company, assignee.

In Re Peru Heating Co. No. 1080, April 23, 1915, a franchise granted to Peru Heating Company by city of Peru.

In Re Roachdale Electric Light & P. Co. No. 1256, Feb. 6, 1915, a franchise granted to Roachdale Electric Light & Power Company by town of Roachdale.

In Re Sullivan County Electric Co. No. 1279, Feb. 19, 1915, a franchise granted to Sullivan County Electric Company by city of Sullivan.

2. Certificates of public convenience and necessity.

Certificates were granted in the following cases:

Electric light, heat, and power systems and transmission lines.

Idaho. In Re Utah Power & Light Co. Case No. F-81, Order No. 220; Case No. F-81, Order No. 221; Case No. F-81, Order No. 222;—all of April 14, 1915, to construct and operate distribution systems and service connections for the distribution and delivery of electricity for light, heat, and power in Parker, Fremont county, Meran, Jefferson county, and Ucon, Bonneville county.

Illinois. In Re Central Illinois Electric Co. No. 3941, July 8, 1915, to construct and operate a distributing system in Argenta.

In Re Central Illinois Electric Co. No. 3939, July 8, 1915, to construct and operate a distributing system in Mechanicsburg, and a transmission line from Mechanicsburg Junction to Mechanicsburg.

In Re Central Illinois Public Service Co. No. 3919, July 22, 1915, to construct and operate distributing system in Adair, and a transmission line from Table Grove to Adair.

Ex parte Central Illinois Public Service Co. No. 3889, June 17, 1915, to construct a transmission line through and a distribution system in Bayliss, Pike county.

In Re Central Illinois Public Service Co. No. 4158, September 9, 1915, to construct a transmission line from Charleston to Ashmore for the purpose of serving Ashmore, Kansas, and Westfield.

In Re Central Illinois Public Service Co. No. 4038, Aug. 19, 1915, to construct and operate distribution systems in Hayes and Pesotum, and a transmission line from Tuscola to Tolono, for the purpose of serving Hayes, Pesotum, and Tolono.

In Re Central Illinois Public Service Co. No. 4037, Aug. 19, 1915, to construct a distribution system in New Salem.

In Re Central Illinois Light Co. No. 3658, April 22, 1915,

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to construct an electric transmission line from Pekin to a point of connection with the transmission line of the Rocky Ford Drainage District for the purpose of furnishing power to said drainage district and other customers along the line.

In Re Central Illinois Light Co. No. 3740, April 22, 1915, to construct a single phase transmission line in Salem township, Knox county, for the purpose of serving the Maquon single phase transmission line from one phase of the three phase Peoria-Elmwood transmission line without transmitting through Yates City.

In Re Cobden Light & P. Co. No. 3251, May 6, 1915, to construct and operate a plant in Cobden.

In Re Economy Electric Light & P. Co. No. 3709, June 17, 1915, to construct and operate a light, heat, and power plant in Blandensville and vicinity.

In Re Elizabeth Light & P. Co. No. 3892, July 8, 1915, to construct and operate a distribution system in Elizabeth, Jo Daviss county, and a transmission line from North Hanover to Elizabeth.

In Re Galva Electric Light Co. No. 4015, Aug. 19, 1915, to construct and operate a transmission line between Oneida and Wataga.

In Re Hoylton Electric Light Co. No. 3631, April 11, 1915, to construct and operate an electrical distribution system in Hoylton and a transmission line from said village to a point of connection with a transmission line of the Nashville Electric Light Company at Hugely northward about 5 miles.

In Re Illinois Northern Utilities Co. No. 3765, June 3, 1915, to construct a transmission line in McHenry county from Harvard to Marengo to connect at Marengo with a line operated from Belvidere through Marengo, in order to adequately serve existing business in Harvard, Cappon, and Chemung, which the Harvard plant is unable to do.

In Re Illinois Northern Utilities Co. No. 3266, April 8, 1915, to construct an electric transmission line from a leased hydroelectric plant owned by the Rock River Light & Power Company at Sterling through said city to connect with a transmission net work in the towns of Dixon, Freeport, Polo, Amboy, Prophetstown, Tampica, and Morrison, in order to render the leased power available for use in said towns.

In Re Rankin Electric Light Co. No. 3610, April 9, 1915, to furnish electricity from a plant at the village of Rankin to the village of Rankin and East Lynn and their inhabitants.

Ex Parte Seymour & W. Heat, Light & Power Co. No. 3896, June 30, 1915, to construct and operate distribution systems in White Heath, Piatt county, and Seymour, Champaign county, and a transmission line from Bondville, Champaign county, to Seymour.

In Re Springfield Gas & Electric Co. No. 3874, June 17, 1915, to construct and operate a distribution system in Rochester and a transmission line from an existing line to Rochester.

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In Re W. J. Wright Co. No. 3769, May 6, 1915, to construct and operate a lighting plant in Dongola.

New Hampshire. In Re Van Auben, D-280, Order No. 448, July 8, 1915, to operate a lighting plant in the western part of the village of Campton.

In Re Conway Electric Light & P. Co. D-175, Order No. 640, September 1, 1915, to operate an electric utility in part of the town of Conway.

Wyoming. In Re Baggs, No. 6, July 27, 1915, to construct and operate a municipal electric light and water system in Baggs.

Electric Railroads.

California. In Re Monterey & P. G. R. Co. Application No. 1687, Decision No. 2424, May 26, 1915, to construct and operate a railroad in the cities of Monterey and Pacific Grove.

Illinois. In Re Freeport R. & Light Co. No. 3727, June 3, 1915, to construct a street railway in the city of Freeport.

In Re Illinois Northern Utilities Co. No. 3480, May 6, 1915, to construct and operate a street railway in Dixon and extending beyond said city upon the Hazelwood Road.

In Re Evanston R. Co. No. 3891, June 3, 1915, to construct suitable terminal facilities with waiting rooms at Howard street, Evanston.

Illinois. In Re Western United Gas & Electric Co. No. 3986. Aug. 19, 1915, to construct and operate a gas distribution system in Ardmore.

Illinois. In Re Illinois Pipe Line Co. No. 4025, July 22, 1915, to conduct the business of transporting crude petroleum and water, by means of a pipe line running from Wood river through Martinsville to and beyond the Indiana-Illinois state line, and by means of gathering or feeder lines in the state.

Massachusetts. In Re Brockton Gaslight Co. June 10, 1915, to manufacture and sell gas in Stoughton.

In Re Plymouth Gaslight Co. July 2, 1915, to manufacture and sell gas in Plymouth.

Railroads.

Illinois. In Re Calhoun County R. Co. No. 3926, July 8, 1915, to construct and operate a standard gauge railway from Pearl Station on the Chicago & Alton Railroad, Pike county, to Kampsville, Calhoun county.

In Re Caseyville R. Co. No. 3895, June 3, 1915, to construct and operate a narrow gauge railway in St. Clair county, with the option to change to a standard gauge, from a point on the Caseyville-Edgemont road to East St. Louis.

In Re Herrin Northern R. Co. No. 3713, April 22, 1915, to con-

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struct and operate a railroad 1.1 miles in length near Freeman, Williamson county, for the purpose of hauling freight to and from the Possum Ridge Mine.

Shipping.

Illinois. In Re West Shore S. S. Co. No. 3877, June 3, 1915, to conduct the business of the transportation of persons on the water of Lake Michigan between Lincoln Park and Jackson Park in the city of Chicago and intermediate points.

Telephones.

Illinois. In Re Beason Teleph. Co. No. 3807, May 20, 1915, to construct and operate a telephone exchange in Beason, Logan County, and lines in the immediate vicinity.

In Re Christian County Teleph. Co. No. 3723, June 23, 1915, to construct and operate a telephone system in Bulpitt, Christian county.

In Re Christian County Teleph. Co. No. 3721, June 3, 1915, to construct and operate a telephone system in Humphreys, Christian county.

In Re Christian County Teleph. Co. No. 3722, Aug. 19, 1915, to construct and operate a telephone system in Jeiseyville, Christian county.

In Re Perry County Teleph. Co. No. 3781, July 1, 1915, to construct and operate a telephone system in Pinchneyville, Christian county, and its vicinity.

New Hampshire. In Re Glen Teleph. Co. D-259, Order No. 456, August 3, 1915, to conduct a telephone business in the towns of Bartlett and Jackson.

In Re Perkins, D-284, Order No. 453, July 22, 1915, to construct a telephone business in Danbury.

Wyoming. In Re Government Valley Co-op. Teleph. Co. No. 5, Aug. 10, 1915, to construct and operate a rural telephone line from Sundance to Farrall.

In Re Rock Ford Rural Teleph. Co. No. 1, July 24, 1915, to construct and operate a rural telephone line from Sundance to Beulah, with a branch line on the Rifle Pitt Divide extending to Buelah.

Warehouses.

Illinois. In Re Central Elevator Co. No. 4064, July 23, 1915, to operate a class "A" warehouse for the storage of grain and flaxseed at One Hundred and Second street and the Calumet river in the city of Chicago.

In Re Central Illinois Grain Co. No. 3748, May 20, 1915, to operate a class "B" warehouse for the storage of grain at the North-

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west corner of Fifteenth street and Ridgely avenue in the city of Springfield.

In Re Federal Warehouse Co. No. 3673, April 8, 1915, to construct and operate a warehouse for the storage of goods at the southwest corner of Adams and Oak streets in the city of Peoria.

In Re Peterson Express & Van Co. No. 4144, Sept. 9, 1915, to operate a warehouse for the storage of household goods and other personal property at 1011 and 1013 Fifty-fifth street in Chicago.

In Re Security Elevator Co. No. 3949, June 30, 1915, to operate a warehouse for the storage and transfer of grain on the Southern railroad near Fourteenth and Nectar streets in the city of East St. Louis.

In Re Springfield Warehouse Co. No. 3852, Aug. 19, 1915, to operate a warehouse for the storage of goods other than grain at Tenth street and South Grand avenue in the city of Springfield.

Water.

California. In Re Walnut Grove Waterworks, Application No. 1469, Decision No. 2380, May 10, 1915, to construct and operate a plant to supply water for domestic and irrigation purposes in a portion of Los Angeles county.

Idaho. In Re Campbell, Case No. F-84, Order No. 229, May 27, 1915, to construct a water system in the town of Lava Hot Springs, otherwise known as Hall City, Bannock county.

In Re McMillan & McRea, Case No. F-92, Order No. 257, July 30, 1915, to construct a water system in Rogerson, Twin Falls county.

In Re Pocatello Realty & Invest. Co. Case No. F-90, Order No. 256, July 30, 1915, to construct a water system in the town of North Pocatello and adjoining lands.

Illinois. In Re Illinois Light & P. Co. No. 3479, May 20, 1915, to construct and operate a dam and hydroelectric power plant with a toll bridge in connection therewith across the Kankakee river at a point in township thirty-two in Will county.

Certificates were refused in the following cases:

Railroads.

California. In Re Bay Shore R. Co. Application No. 1230, Decision No. 2052, Jan. 8, 1915, application was dismissed at the request of the applicant.

Telephones.

Indiana. In Re Avilla Mut. Teleph. Co. v. Western U. Teleg. Co. No. 226, March 5, 1915, there was no necessity for an additional telephone franchise in Avilla, where the petitioner purchased the plant of an existing company pending the hearing.

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Warehouses.

North Dakota. In Re Judge v. Chicago, M. & St. P. R. Co. F-20[illegible], May 28, 1915, the Commission held, upon application to it to designate a site for a grain elevator at Armour, that the public welfare would not be advanced by the construction of an additional elevator, considering that one elevator was closed, that another had been torn down, and that the remaining elevators were sufficient to handle the grain at that station.

3. *Extensions.*

Extensions were ordered or authorized in the following cases:

Electric light.

New Hampshire. In Re Warren Water & Light Co. D-268, Order No. 447, authorized to extend the service line from Warren to Wentworth.

New York. In Re Middleville Electric Light Co. Case No. 4889, No. 211, May 25, 1915, authorized to extend the service line from Middleville to the Herkimer County Home.

Gas.

California. Smott v. Pacific Gas & Electric Co. Case No. 790, June 4, 1915, it was held that a gas utility would not be required to extend its mains the whole length of a partly ungraded and unimproved street, but only so far as the grade had been established, where it was questionable whether the extension would net a reasonable return on the investment.

Railroads.

Connecticut. In Re Bridgeport, Docket No. 1526, April 23, 1915, the New York, New Haven, & Hartford Railroad Company was authorized to construct a side track for switching purposes only, upon and across Barnum avenue in Bridgeport, for the use of the Union Metallic Cartridge Company.

In Re Connecticut Co. Docket No. 1520, April 20, 1915, authorized to construct a single track extension in Bridgeport on Boston avenue from Hallett street to Central avenue, and a turnout at Hallett street; also to reconstruct its existing single track for a distance of 150 feet at Hallett street.

Minnesota. American Iron & Supply Co. v. Great Northern R. Co. A-1691, July 27, 1915, the company was authorized to construct a spur track at yards at 821-833 N. Washington avenue, Minneapolis, after the owner of the yards shall execute a right of way deed.

North Carolina. In Cook v. Atlantic Coast Line R. Co. July 29, 1915, it was held that an industrial siding installed by a railroad

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company for the benefit of a shipper at their joint expense should be extended to accommodate another shipper, as against the protest of the original user, upon the petitioner paying the objector a *pro rata* part of the cost of the original siding and doing part of the work for the railroad in making the extension, rather than to require a separate siding, where adequate service could be given by one siding.

Telephones.

Wisconsin. In Western Crawford County Farmers Teleph. Co. v. Union Teleph. Co. Aug. 7, 1915, it was held that authority may be given to the owner of a private telephone line in a county to extend it into a city to connect with a company giving city service, although there is an antiduplication statute, and an existing telephone company serving the same territory has a similar extension, where the company is not improperly deprived of subscribers, and the private owners require a city service, have no need of county service, and would be required to pay switching fees for both city and county exchange calls if they were subscribers of the company, and therefore a complaint that the extension was constructed without notice to the Commission or the company as required by statute will be dismissed.

In Re Whittlesey Teleph. Co. Aug. 28, 1915, it was held that a telephone company could not object to the extension of the local service lines of another telephone company into a territory in which the objecting company has a toll line but does not operate for local service.

Water.

California. In Cascade Land v. Marion Water & Power Co. Case No. 761, June 2, 1915, the defendant was ordered to extend its pipe lines in Marion county to the land of the complainant, it appearing that the utility had sufficient water at its disposal, and complainant offering to bear the expense of the extension.

In Cohen v. Marin Water & Power Co. Case No. 820, Decision No. 2655, Aug. 3, 1915, the utility was ordered to substitute larger mains to serve residents of Kentfield, under a stipulation that the additional expense should be allowed if a municipality acquired the plant by condemnation.

In Smith v. South Los Angeles Water Co. Case No. 794, May 7, 1915, the defendant was ordered to extend mains in the city of Vernon, so as to serve residents of the Aldine Square tract of land. It was also held that the cost of extension would be a proper capital expenditure to be considered in fixing rates.

Indiana. Ex Parte Ft. Wayne Municipal Water Co. No. 1466, May 3, 1915, the city of Fort Wayne was authorized to lay mains outside of the city in the Irvington Park addition.

Extensions were refused in the following cases:

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Electric light.

Pennsylvania. Bixter v. United Electric Co. Docket No. 331, May 7, 1915, a complaint to compel an electric light company to extend its lines to dwellings in a sparsely settled locality was dismissed, where it appeared that the revenue from the service requested would yield an insufficient return from the expenditure, provided that an offer of the utility to make the extension if complainants would make an advance payment of part of the cost, to be returned at the end of a definite period if they continue as consumers, be left open to complainant for their acceptance within a specified time.

Wisconsin. In Re Pierce, May 21, 1915, the Commission refused to compel an electric light company to extend service to a residence in a sparsely settled community, where the revenue would not yield an adequate return on the cost of installation, and where proceedings by a city whose electric plant is connected with the residence, but not permitted to supply it, to purchase the plant of the utility, are pending, and the installation would entail a duplication of investment and an eventual loss either by the city or by the utility.

Railroads.

Minnesota. In Re Commercial Club, A-1440, July 30, 1915, where it was held that a track connection between two railroads serving a village would not be compelled, where there was no public necessity for the connection beyond that of two industrial plants which would effect a saving in freight charges on incoming raw material, by through shipments over the proposed connection, but which could obtain their material through a track connection without the town at a small difference in mileage.

Street railroads.

Arizona. In Re Phœnix Street R. Co. Docket No. 238, April 7, 1915, it was held that a street railway company would not be compelled to extend a car line where it would result in the abandonment of another line which had been operated for twenty years and had been constructed through donations of persons residing on the line, which donations had not been returned.

Nebraska. Hall v. Lincoln Traction Co. complaint No. 272, July 14, 1915, the Commission dismissed a complaint to compel a street car company to make a track connection between car lines on parallel streets and to reroute certain lines of cars thereon, where it appeared that but a fraction of the people having inadequate service would be convenienced, existing schedules would be disarranged, as many people would be inconvenienced as benefited, and that the construction, at the expense of $15,000, would be but a make-shift and eventually would have to be displaced by a cross-town line at some other

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location. The Commission remarked that the necessities of rival business districts were to be considered only to the extent that they influence the tend of traffic.

Telephones.

Wisconsin. In Re Marathon City Teleph. Co. June 2, 1915, the Commission refused to permit a telephone company to make an extension merely to give service to one subscriber, where the extension would parallel the lines of another company.

In Re Whittlesey Teleph. Co. Aug. 28, 1915, a telephone company was not permitted to extend its service to a town in which another telephone company had some local business and a toll line equipped to carry local service, no testimony being presented showing a public demand for the service of the petitioning company.

Water.

California. In Gheffoli v. Marin Water & Power Co. Case No. 712, Decision No. 2660, a complaint to compel an extension of mains along a road was dismissed, where it appeared that the limited number of consumers would not afford adequate compensation for the necessary expenditure.

ILLINOIS PUBLIC UTILITIES COMMISSION.

IN RE MOWEAQUA TELEPHONE COMPANY.

[No. 3357.]

Valuation — Telephone plant — Proposed improvements.

1. Improvements in a telephone plant due to a change from grounded to metallic circuit will not be valued for rate-making purposes until they have actually been made.

Apportionment — Central telephone office expenses.

2. The division of central office telephone expenses on a per station basis is an unreliable method of computing telephone rates, since such expenses are in a large measure dependent upon the number of subscribers served which may be determined by a "peg count" or traffic study of the calls handled through the exchange.

[August 26, 1915.]

APPLICATION of telephone company to increase existing rates and to establish rates for metallic circuit service when proposed improvements in line are completed; application to increase existing rates denied, and jurisdiction reserved until completion of

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proposed improvements in order that a valuation may be made to determine the reasonableness of proposed metallic circuit rates.

The appearances are set out in the opinion.

By the Commission: Application in the above-entitled matter sets forth that the petitioner is a public utility engaged in the management and operation of a telephone system in and around the village of Moweaqua, Shelby county, Illinois; that the rates it now has in force and effect do not produce sufficient revenue to enable the utility to pay all operating expenses, including depreciation and a reasonable return on the capital invested; that the petitioner proposes to rebuild the exchange plant in the village of Moweaqua, replacing the present system with a metallic system; that the proposed increase in rates for grounded line service should become effective at once, and the proposed rates for metallic line service should become effective immediately after the completion of the rebuilding of the exchange plant.

The rates of the petitioner now in force and effect, as set forth in the application, are as follows:

Individual line business telephones in the village	$15.00	per year
Individual line business telephones in the country	24.00	" "
Party line business telephones in the country	15.00	" "
Individual line residence telephones in the village	12.00	" "
Rural party line telephones	12.00	" "
Business extension telephones	6.00	" "
Residence extension telephones	6.00	" "
Extension bells	3.00	" "
Switching charge for rural service subscribers	5.00	" "

Application is made for authority to discontinue the rates now in force and effect, and substitute in lieu thereof the following schedule:

Individual line business telephones in the village—metallic circuit	$27.00	per year
Two-party line business telephones in the village—metallic circuit	21.00	" "
Party line business telephones in the country—grounded circuit	24.00	" "
Individual line residence telephones in the village—metallic circuit	21.00	" "
Two-party line residence telephones in the village—metallic circuit	18.00	" "
Individual line residence telephones in the village—grounded circuit	18.00	" "
Rural party line telephones—grounded circuit	18.00	" "
Business extension telephones	12.00	" "

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Residence extension telephones	$9.00 per year
Extension bells	6.00 " "
Switching charge for rural service subscribers	9.00 " "

All of the above rates, with the exception of the rate for switching rural-service subscribers, are subject to a discount of 25 cents per month if paid at the company's office on or before the 15th day of the current month. The rate for switching rural-service subscribers is subject to a discount of 25 cents per month if paid six months in advance, at the company's office, on or before January 15th and July 15th of each year.

An extra mileage charge of $6 per mile per year, minimum charge $5, applies to individual line telephones beyond the village limits, or Moweaqua exchange radius.

Hearings in this case were held at Springfield, Illinois, April 7 and May 4, 1915. O. F. Berry and B. B. Boynton, attorneys, appeared for the petitioner. Logan Hay, attorney, on behalf of the Chamber of Commerce of Moweaqua, appeared objecting.

The petitioner submitted at the hearing on April 7th statements of assets and liabilities, earnings and expenses, station development, etc., and an inventory and appraisal of the property of the Moweaqua Telephone Company.

Two reports were prepared covering the inventory and appraisal of the property. The first report hereinafter referred to as "plan I" covers the cost of reproduction new, the present value of the plant, the amount of depreciation, and the going value. The second report hereinafter referred to as "plan II" sets up the estimated value of the exchange plant with a new distribution system in the village, depreciation, going value, and an analysis of revenue and expenses under the proposed rates.

"Plan I."

Recapitulation.

	Cost to Reproduce.	Salvage.	Present Value.
Real estate	None.	.....	None.
Central office equipment	$1,037.75	$83.50	$874.57
Distributing system	3,222.94	110.33	2,257.26
Subscribers' stations equipment	2,714.25	226.60	2,114.42
Furniture and fixtures	644.50	.....	503.95
Tools	105.70	.....	.....
Stable and garage equipment	849.00	.....	769.71
Total	$8,574.14	$420.43	$6,519.91

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"Plan I."—*Continued.*

	Cost to Reproduce.	Salvage.	Present Value.
Stock material	99.08	.....	99.08
Plans and engineering	1,286.12	.....	977.45
Rural plant	15,643.43	244.00	12,498.84
	$25,602.77	$664.43	$20,095.28

"Plan II."
Recapitulation.

	Cost to Reproduce.	Salvage.	Present Value.
Real estate	None.	.....	None.
Central office equipment	$1,273.00	$83.50	$1,147.75
Distributing system	8,710.63	881.29	8,710.63
Subscribers' stations equipment	2,714.25	226.60	2,114.42
Furniture and fixtures	644.50	.....	503.95
Tools	105.70	.....	86.96
Stable and garage equipment	849.00	.....	682.75
Total	$14,297.08	$1,191.39	$13,246.46
Stock material	99.08	.....	99.08
Plans and engineering	1,986.96	.....	1,986.96
Rural plant	15,643.43	244.00	12,498.94
	$32,026.55	$1,435.39	$27,831.34

[1] In fixing the maximum rates for telephone service that petitioner may charge at Moweaqua, Illinois, the Commission is asked to consider not only the value of the present telephone plant at that point, but also to take into consideration the proposed additions and betterments that petitioner contemplates making to said plant in the immediate future. In other words, we are asked to consider petitioner's telephone plant as if it already included the new construction and improvements that are about to be made.

It is a fundamental principle that a regulatory body, in fixing the value of the property of a public utility for rate-making purposes, is justified in including in its valuation only such property as exists at the time the investigation is made, and as is used and useful in serving the public.

The Commission feels that it would not be justified in this

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case in departing from the principle above stated, and that until said proposed additions and betterments have actually been made, it should only consider and include in its valuation the existing telephone plant of the petitioner. Of course, when the proposed improvements have been completed, a showing of that fact and the value of such improvements can then be made to the Commission, and the maximum rates that petitioner may charge for telephone service rendered the public through the reconstructed plant can then be determined.

[2] In substantiation of the proposed rural switching rate of $9 per year, with a discount of $3 per year if paid six months in advance on or before January 15th and July 16th of each year, the petitioner submitted a statement of central office expenses apportioned as follows:

Expenses of Which Service Stations Should Bear Their Pro Rata Share.

	Annually.
Manager	$1,200.00
Bookkeeper	300.00
Operators	1,200.00
Office rent	180.00
Heat, light and power	108.00
Central station equipment expense	96.00
Cable expense	60.00
Bad accounts	83.94
	$3,227.94

Number of stations, 553.
Per station cost, $5.84.

The division of central office expenses, however, on a per station basis, is an unreliable method of computing rates, as such expenses are, in a large measure, dependent upon the amount of work involved in handling calls rather than upon the number of subscribers served.

Accordingly, a "peg count" or traffic study of all traffic handled through the Moweaqua exchange was made for a five days' period under the supervision of the Commission's experts, and a report thereof made a part of the record. An analysis of this traffic study indicates that a net rate of $7 per year for switching rural service subscribers is justified, but that if a discount of $3 per year for payment six months in advance is applied, the average switching rate will be less than the average expense per station of switching these subscribers. However, in view of the con-

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clusion we have arrived at in this case, it will not be necessary, at this time, to determine the amount of discount that may properly be allowed in connection with the rates for the several classes of service proposed by petitioner.

From a careful consideration of the testimony and exhibits introduced in this case, the Commission finds as follows:

(1) That the proposed immediate increase in the rates for grounded line telephone service is not warranted, and the application of the petitioner for authority to put into effect such increased rates should be denied.

(2) That the rates petitioner may charge for metallic service cannot be determined by the Commission until such time as petitioner's telephone system has been made metallic and a showing of the value of such reconstructed plant has been made before the Commission.

(3) That the additions and betterments that petitioner proposes to make to its said telephone plant at Moweaqua are reasonable and necessary in order that the petitioner may be able to furnish adequate and efficient service to the public.

(4) That if said improvements are made in a manner, to the extent and by the expenditures of the amounts proposed by the petitioner, as set forth in "plan II," above mentioned, the rates petitioner is seeking authority to establish, except the rate for switching rural service stations, will then be reasonable and just.

It is therefore ordered that for the present the prayer of the petition will not be granted.

The Commission, however, reserves jurisdiction of the subject-matter and of the parties, so that after the improvements above referred to have been made, petitioner may report that fact to the Commission; the case may then be reopened for further hearing as to the value of such improvements and of the reconstructed plant. The proposed increase in rates may then be finally considered.

By order of the Commission this 26th day of August, 1915. Dated at Springfield, Illinois.

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MASSACHUSETTS BOARD OF GAS AND ELECTRIC LIGHT COMMISSIONERS.

IN RE SALEM ELECTRIC LIGHTING COMPANY.

Security issues — Price of shares — Antistock law.

1. The Massachusetts law requiring that the vote of the Board as to amount of stock reasonably necessary shall be based on the price fixed by the directors, "unless the Board is of the opinion that such price is so low as to be inconsistent with the public interest, in which case it may determine the price at which such shares may be issued," was not intended to change the original purpose of the so-called "antistock watering law," requiring the issue of stock at not less than the market value thereof at the time of the increase, "nor to permit the fixing of the price of such new stock materially lower than would insure a ready market for same."

Security issues — Sale price — When so low as to be inconsistent with public interest.

2. The price of $75 per share fixed by the directors of a public service corporation at which a proposed issue of stock shall be offered to stockholders on a par value of $50 a share is so low as to be inconsistent with the public interest, where it appears that the company recently issued stock of the par value of $220,000 at the price of $90 per share, as determined by the directors; that the dividends during the past five years have averaged over 11 per cent; and that the stock of the company is owned by a holding association which will doubtless be the beneficiary of the proposed issue.

(September 10, 1915.)

APPLICATION for authority to issue additional capital stock of the par value of $400,000 to be disposed of to stockholders—in this case a holding association—at $75 a share on a par value of $50 per share; without passing upon the evident inconsistency between the system of financing contemplated by the legislature and that superimposed between the company and the investing public by the holding association, the Board held that the proposed price was too low to be consistent with public interest, and fixed the price at $85 per share. Further conditions appear in the order.

By the Board: This is an application by the Salem Electric Lighting Company for the approval of an issue of additional capital stock of the par value of $400,000, the proceeds thereof to be used in paying floating indebtedness already incurred for new construction, extensions, and permanent improvements, and

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in paying for needed additions to and permanent improvements of its plant, distributing system, and equipment.

In the last approval of stock for this company, specific provision was made for certain underground construction required by an act passed in 1910. The stock authorized for this purpose was issued, but only a portion of the work has been done owing to delays in rebuilding and relocating the railroad tunnel in the heart of the city of Salem. The money so provided is still available for the completion of this work. Since that approval the company suffered a substantial loss of its property in the great Salem fire, in large part, however, covered by insurance. The money realized from its insurance has been expended meantime in replacing the property lost in the fire with property claimed to be equivalent in value. The company has also recently entered into an important contract for the supply of power to one of the mills in Salem. The enlargement of its station, principally for this purpose, is estimated to cost $389,000. Of this amount more than $225,000 was under contract at the time of the hearing, and over $58,000 had been expended prior to June 30, 1915. Additions to plant between June 30, 1911, and June 30, 1915, not otherwise provided for, appear to have cost over $175,000, and are represented in its promissory notes which were outstanding to the amount of $195,000 on the latter date. The estimated cost of completing the work in progress, and of making certain other additions to its plant, exceeds the amount of stock hereinafter approved therefor.

[1, 2] The directors of the company have fixed the price at which the new shares shall be offered to the stockholders at $75 a share on a par value of $50 a share. In 1912 the company issued stock of the par value of $220,000 at the price of $90 a share as determined by its directors. The company has recently paid regular dividends of 10 per cent. In fact the dividends paid during the past five years averaged over 11 per cent. The law requires that the vote of the Board as to the amount of stock reasonably necessary shall be based on the price fixed by the directors "unless the Board is of opinion that such price is so low as to be inconsistent with the public interest, in which case it may determine the price at which such shares may be issued." In commenting on this provision of the law the Board has al-

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ready had occasion to say that it was not intended to change the original purpose of the so-called "antistock watering law," requiring the issue of additional stock at not less than the market value thereof at the time of increase, "nor to permit the fixing of the price of such new stock materially lower than would insure a ready market for the same,"—a construction which has received the sanction of the supreme court.

In 1911 the stock of this company was acquired by the trustees of the North Boston Lighting Properties, a voluntary holding association, issuing its own common and 6 per cent preferred shares based upon the securities of this and certain other gas and electric companies. The stock of the latter companies has, in consequence, been withdrawn from the market, and the new shares which it is now proposed that this company shall issue will doubtless be taken by the trustees and made the basis of a further issue of the association's securities. So far as the Board is informed the sum to be realized by the company will, within reasonable limitations, be represented by the same number of the association's shares, whatever the issue price of the Salem company's stock. There was no evidence of any change in the company's policy with respect to dividends, or to warrant the conclusion that the price fixed by the directors is necessary to insure a ready market for the new shares. On the other hand, one obvious result of adopting such price would be a larger distribution in dividends without any change in their rate. Without discussing here the evident inconsistency between the system of financing such a company contemplated by the legislature, and that superimposed between the company and the investing public by this holding association, the Board is of the opinion that under the circumstances described the price fixed by the directors is so low as to be inconsistent with the public interest.

The following is therefore adopted:—

On the petition of the Salem Electric Lighting Company, pursuant to the provisions of § 39 of chapter 742 of the Acts of the year 1914, for the approval of an issue of additional capital stock of the par value of $400,000 for the objects named in said petition, after public notice and hearing, it being deemed by the Board that the amount of stock hereinafter named is reasonably

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necessary for the purpose for which such issue is authorized, it is—

Ordered that the Board hereby approves of the issue by the Salem Electric Lighting Company, in conformity with all the requirements of law relating thereto, at the price of $85 a share, as determined by the Board under the provisions of § 43 of said chapter, of 6,000 shares of new capital stock of the par value of $50 each; the proceeds thereof to be applied to the following purposes and to no other, to wit: the proceeds of 2,050 shares to the payment and cancelation of an equal amount of the obligations of the company represented by its promissory notes outstanding on June 30, 1915, and the proceeds of 3,950 shares to the cost of additions to plant made subsequent to said date.

And if any shares shall remain unsubscribed for by the stockholders entitled to take them under the provisions of law relating thereto, it is further—

Ordered and *determined* by the Board that all such shares shall be offered for sale at some suitable place in the city of Boston, and that notice of the time and place of such sale shall be published in the "Salem Evening News," a newspaper published in the city of Salem, and in the "Boston Daily Advertiser," and the "Boston Evening Transcript," newspapers published in the city of Boston.

MONTANA PUBLIC SERVICE COMMISSION.

PUBLIC SERVICE COMMISSION.

v.

WATER UTILITIES.

[Docket No. 477; Report and Order No. 131.]

Service — Extensions — Water — Service pipes to property line — Who must bear cost.

1. Water utilities were not required to install and maintain, at their own expense, service pipes from the main line on streets to the property line of the consumers, where, in the absence of a physical valuation of the utilities, it appeared that the necessary capitalization of such expense to the utilities would be more harmful to consumers than if they made the extension at their own expense.

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Service — Water meter — Ownership.

2. Water utilities adopting the meter system must provide, install, and maintain the meters at their own expense, except that consumers may be required to provide meter boxes at special locations, and also to pay for any unusual piping.

Payment — Meters — Deposit — Interest.

3. Water utilities requiring certain consumers to make a deposit to insure the exercise of ordinary diligence to protect meters must pay interest thereon at the rate of 6 per cent per annum.

Rates — Water — Minimum charge — meter rental.

4. A utility may make a reasonable minimum charge for water based on the size of the meter and consumption of water, to protect itself from loss if no water is consumed, but it cannot make such charge in the form of rental for the meter.

Service — Extension — Water — Tapping charge — Service pipe.

5. A water utility in supplying service to a new consumer must, at its own expense, tap the street main and furnish the standard connections, the consumer to pay at cost for any other material used or labor furnished in connection with the installation of the service pipe or curb box to his property line.

Service — Water — Discontinuance — Notice.

6. A utility must give notice to a consumer before shutting off his water supply, except in case of an emergency.

Service — Water — Charge for restoring service to delinquent.

7. A maximum charge of $1 for turning on water that has been shut off because of nonpayment of bills was held reasonable.

Payment — Water — Deposit — Compelling service.

8. A water utility cannot refuse service to an applicant, although the owner of the property declines to be responsible for payment, where the applicant tenders a deposit to guarantee payment of bills for a period not less than the customary billing period of the utility and in no event less than one month.

Rates — Water — Additional taps.

9. A consumer of water at flat rates who installs additional taps without the consent of the utility is liable to pay at the regular rate provided for the additional service.

Service — Water — Discontinuance — Furnishing water to nonsubscribers.

10. A water utility may shut off water from consumers who habitually furnish water to nonsubscribers.

Service — Water — Who may turn on.

11. Water which has been shut off by the utility should not be turned on except by the utility or by its direction.

Fines and penalties — Violation of utility rule.

12. Water utilities in Montana have no authority to impose a fine or penalty on a patron for violation of rules.

Service — Extensions — New location — Rules and regulations.

13. A Public Service Commission cannot establish rules and regulations governing the extension of water mains in new localities, since

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the necessity for the extension must be determined from the facts of each case.

Service — Water meters — Purchase of utility from consumer.

14. Water utilities adopting the meter system that are financially unable to acquire meters owned by consumers were permitted to purchase such meters at a *pro rata* value, paying for them in instalments limited to a reasonable time, and refunding to the consumers by means of a percentage allowance on monthly or quarterly bills for water consumed.

Service — Water meters — Purchase by consumers through a utility.

15. Water consumers desiring meters installed, which utilities are financially unable to purchase, were permitted to purchase meters through the utilities, which were required to install the meters at their own expense and to refund the purchase price by means of a percentage allowance on monthly or quarterly bills, allowing interest to consumers at the rate of 6 per cent per annum.

(HALL, Commissioner, dissenting.)

[August 7, 1915.]

PROCEEDING on the initiative of the Commission to establish rules and regulations governing and standardizing water service; rules and regulations established.

The appearances are set out in the opinion.

By the Commission: Hearing was regularly held at Helena, May 6, 1915, represented:

Dillon City Water Dept., by Leonard Eliel, H. L. McCaleb, Phil Anderegg; Miles City Water Dept., G. C. Pruett; Manhattan City Water Dept., H. J. Thomas; Glasgow City Water Dept., E. S. Severence; Libby W. W. E. L. & P. Co., H. E. Robinson; Billings City Water Dept., F. X. N. Rademaker; Kalispell City Water Dept., W. H. Lawrence; Roundup City Water Dept., J. H. Grant; Lewistown City Water Dept., I. B. Kirkland; Columbus City Water Dept., C. W. Doyle; Butte Water Company, Eugene Carroll, A. L. Matter, J. E. Corrette, L. O. Evans; Anaconda Copper Mining Co., H. M. Johnson, Water Dept., L. O. Evans; Helena City Water Dept. and the city of Helena, Lincoln Working, E. D. Weed, Edw. Horsky; Missoula Light & Water Co., C. H. Christensen, W. L. Murphy; Virginia City Water Co., Sarah Bickford; Belgrade Water Co., Wm. Fitzstephens; Deer Lodge Citizens Water Co., and South Deer Lodge Water Co., Joseph L. Coleman; Whitefish City Water Dept., W. K. Trippett; Havre City Water Dept., J. A. Sander-

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son; Great Falls City Water Dept., M. L. Morris; Missoula, City of, J. L. Wallace; Butte, City of, J. B. Dwyer; Livingston Water Co., T. M. Swindlehurst; Laurel City Water Dept., Charles Davis; Commissioners Hall, Morely, McCormick. Assistant Attorney General, W. H. Poorman.

The Public Service Commission of Montana was created by the thirteenth legislative assembly (chapter 52, approved March 4, 1913). It is the duty of the Commission to correct unjust and unreasonable rates or practices affecting the service rendered by such public utilities as come within its jurisdiction. During the short time that the Commission has been in existence, much of its effort has been directed with a view to removing discrimination, by the establishment of standard schedules of rates and rules governing the service, to the end that there would be no cause for complaint by reason of concessions being granted to favored patrons or preferred classes of consumers.

On April 6, 1915, having had under careful consideration the tariffs filed by water utilities of the state, and it appearing that there was a decided lack of uniformity where the conditions were not apparently dissimilar, and desiring to be further informed on these matters, it was ordered that a public hearing be held in the offices of the Commission, May 6th, at which time and place any and all water utilities would be given an opportunity to show cause why rules and regulations should not issue, governing and standardizing the supplying of water at all points in Montana, the more important features to be considered, and as set forth in the notice of hearing, being:

"Section 1. Why should the utility not provide, install, and maintain, at its own expense, service pipes and curb boxes in the public streets?

"Section 2. Why should the utility not provide, install, and maintain meters at its own expense?

"Section 3. Why should a utility require the consumer to make a deposit to cover the cost of the meter when same is furnished by the utility?

"Section 4. What is the justification of a meter rental charge?

"Section 5. Why should the consumer be required to stand the expense of maintaining a meter owned by the utility?

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"Section 6. What is the justification of a 'tapping charge'?

"Section 7. Why should a utility not be required to give notice before water supply is shut off, except in emergency cases?

"Section 8. What is the justification of assessing a penalty against a delinquent consumer?

"Section 9. Why should the utility decline to give service except when the owner of the property becomes responsible, regardless of its occupancy?

"Section 10. When service is furnished on flat rates and additional fixtures are installed, without notice to utility, should the consumer be assessed double rates or other penalties?

"Section 11. In what position is the consumer who secretly or otherwise furnishes water to a nonconsumer?

"Section 12. When the water has been shut off by the utility, under what circumstances may the consumer turn it on?

"Section 13. Is the power vested in a utility to assess a fine for violation of its rules?

"Section 14. Why should the Commission not exercise its discretion in the matter of extending mains, in order to reach additional properties?

"Other items of service not enumerated above, if shown to be pertinent, may be considered at this hearing in the same manner as though specifically set forth herein.

"The Commission will take such action, after hearing, as may seem to it proper, and each and every water utility will be expected to fully disclose its defense in the record of this proceeding; otherwise it will be assumed that utilities not so testifying have no defense to offer."

The foregoing questions will be considered in this report in sequence, upon the testimony submitted and conclusions reached after having made such investigations as seem pertinent to a clear and complete understanding of the various situations presented.

[1] *1st. Service Pipes.*—It would appear, casually, that the utility should not only lay its mains, but should also lay and maintain the service pipes in the public streets as a part of its

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permanent plant. The question is asked: "Are service pipes not essential to the distribution of the utility's product, and could the utility perform its obligations to the public without them? Why, then, should the consumer be called upon to furnish a part of the equipment, which differs from the mains only in regard to size of the pipes; the two combining to form a complete distribution system?"

Reviewing the action taken by Commissions in other states and decisions handed down by various courts, we find many reasons advanced both for and against complete ownership by the utility. It is probably true that the latter can furnish the material and perform the labor with its organized forces for less money than the individual, who, generally speaking, has a very limited knowledge of such things and must depend entirely upon the contractor whom he employs. There is not, however, enough capital involved to make the difference in cost a determining factor. It is estimated that the average cost of furnishing and laying the necessary pipe line beyond the main (service pipe) is about $40; the life of pipe varying considerably, depending upon the nature of the soil and mineral properties with which it comes in contact. It may be said that the average is in the neighborhood of twenty years. This estimate is exclusive of cast iron and lead services, as they are not in general use in Montana.

To throw additional light upon the question it might not be amiss to quote the following from the testimony given by Mr. Carroll, Manager, Butte City Water Company:

"Mr. Carroll: We have in Butte 9,500 house connections, in round numbers, those house connections have a reasonable, full, and very low value of $50 per connection, which would make $475,000 invested in house connections in the city of Butte, approximately, at this time. Had we placed those connections ourselves, would have taken care of the depreciation and maintenance—we maintain that a fair depreciation from our experience in Butte, on pipes laid in the ground, is 4 per cent annually. We say that is the depreciation on our large pipes. The depreciation on the small pipes would possibly be the same; may be a little more. So it is 4 per cent, then, the annual depreciation, and that investment at the present time is $19,000 a year on the total depreciation.

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"Now, presuming that we were ordered from now on to make the house connections at the expense of the utility, we would then be held responsible for the pipes already in the ground, which have cost originally $475,000. Now, those pipes have been in the ground ranging from thirty years to one year, and it is fair to suppose that at least fifteen years' average depreciation has taken place in those pipes. That would mean that four times fifteen or 60 per cent of the original value of that investment has gone. Therefore, we should have to immediately increase our depreciation reserve by 60 per cent of the $475,000. In other words, we would immediately have to lay aside on this annual depreciation reserve $285,000, to take care of the maintenance of the pipes that are in already. We would then have to carry on our books this amount as a depreciation, in view of these pipes that are in the ground, and we would begin to charge 4 per cent annually on that, which would mean the addition to our depreciation reserve, which is annual, of $19,000.

"Now, the maintenance of those pipes that are already in the ground, the depreciation takes care of the renewal, but the actual maintenance on that would amount to probably 2 per cent, I should guess—somewhere between 2½ and 2 per cent of the value of the plant for the maintenance. The cost of maintaining those pipes, at say, 2 per cent, would be $9,500 a year. Our operation costs, legitimate operation costs, would be immediately increased at the rate of $28,500 a year at those figures; and there would be no additional return to the utility for that amount of money. And if we are now earning only a fair return on our investment, the additional cost of $28,500 a year to our operation expense would work around to the proposition of the question of rates, and that our rates would not be sufficient to cover our just operation costs.

"This gets into figures in a large plant like Butte, but I think the smaller plants along this line will show you that it might absolutely bankrupt a small community to place this large additional cost on them. With Butte it would mean, as I say, immediately we would have to increase our depreciation reserve, or either get securities or cash of $285,000. That is what it would mean to Butte, should such a rule be adopted, even not applying it to the former connections, but from now on.

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"Now, there is another idea that occurs to me on that line. Butte has pretty nearly reached its growth, so far as its water plant is concerned, and so far as the house connections are concerned. The improvements will not require additional house connections, and our 9,500 house connections at this time represent pretty close to our limit. We may increase 25 per cent in the next ten years or twenty years; so that the present community has paid for these house connections. The new fellow that makes his house connection is having the community pay for that house connection, while the majority of the community have already paid that and are paying a second time to benefit some other consumer."

While the estimates on the original cost of the 9,500 house connections, depreciation, and maintenance of same, submitted by Mr. Carroll, may be rather high, the fact remains that if the water utilities are required to install and maintain these service pipes, it necessarily follows that the investment in such facilities will increase to that extent its capitalization upon which it is entitled to earn a fair return, in addition to setting aside a sufficient amount annually to take care of depreciation. How is this additional revenue to be earned? The utility has nothing to sell but water, and there is no other avenue open to it except to increase its rates per month or per thousand gallons, as the case may be, in an amount commensurate with the added investment; assuming, of course, that the present rates are not unreasonably high. Looking at it in this light, which we believe to be its true aspect, in the absence of a physical valuation of water utilities, we do not find that it would accrue to the benefit of the consumer to reverse the present general practice in the state.

Under these conditions, as we find them to exist, no order will be entered for the present. (Curb boxes are dealt with in § No. 6.)

[2] *2d. Meters, Ownership.*—The intent of this section was in some respects misunderstood. Certain utilities offered testimony to show that no benefit would be derived from the use of meters in their respective districts, owing to local conditions, etc. It was not the Commission's idea, nor is it now, to compel the installation of meters; the only question upon which informa-

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tion was desired being as to who should own, install, and maintain the meter, the utility or the consumer, in the event that meters were used? When this was understood, the matter was quickly disposed of, it being the consensus of opinion, and in fact the practice of nearly all utilities, to furnish, place, and own the meter. There appears to be no question as to the propriety of utility ownership; very little testimony was offered in opposition. Unquestionably the utility is in a better position to judge as to the type of meter best adapted to its use. A meter is not a permanent devise. It requires frequent inspection and repairing. It is the utility's yard stick, so to speak, by which it measures out its wares to the customer. It is manifestly essential that the utility should have full control over meters, to do with them as is finds expedient, removing same from service temporarily to be tested, or for other reasons, or supplanting the obsolete machine by one of more modern construction. The right to do so would be vested in the utility by ownership, but not otherwise.

[3] *3d. Meter Deposit.*—This question is much in the nature of extending credit. If the utility owns the meter and installs it on the premises of the customer, it is only reasonable to expect the latter to exercise proper care against freezing or being otherwise damaged while in his possession. In other words, the meter has been loaned to the customer under certain stipulated conditions, to serve a mutual purpose. The utilities explain that "there are all kinds of people," some (the greater portion) reliable, others totally indifferent, and while there would be no disposition to require a deposit from the former, they should be given this latitude, optional in the judgment of the management, to protect its property against failure to exercise ordinary diligence.

The Commission concurs in the position taken, but we are also of the opinion that the consumer thus required to put up a deposit is entitled to and should receive a reasonable rate of interest thereon.

[4] *4th. Meter Rental.*—The preceding sections contemplate utility ownership of meters. The question is Should the consumer pay a rental for their use? All utilities provide a minimum charge, either direct or by a meter rental, according to the capacity of the latter, which is assessed even though no water is

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consumed during that month. It is conceded that a minimum charge is justified, for the reason that the utility is put to an uncertain amount of expense by its "readiness to serve" at all times. It is not thought necessary in this report to analyze the various items of expense on account of being prepared to supply water, even though none is used; the minimum charge to the consumer, however, is presumed to be arrived at on the basis of the investment, plus an arbitrary proportion of the operating and distribution cost. There is no information before the Commission at this time to indicate that utility ownership of meters would impose a burden demanding greater revenue, or that the present minimum charge should thereby be increased. It should be understood, however, that the Commission takes exception to "meter rental," and when necessary the Commission feels that the utility should protect itself by a reasonable minimum charge based on the size of meter and consumption of water.

In connection with the meter question the following testimony presented by Mr. G. C. Pruett, superintendent of the Miles City Water Department, may be of interest to water utilities that are obliged to pump water by steam or other motive power:

"Mr. Pruett: The utility in every case is in better position. You can install it for half the price that the plumber would charge. This whole business gets back to the proposition of allowing the utility to make a rate to take care of the cost of depreciation. Now, we are metered up. It was necessary to meter; it wasn't because we wanted to at all, or anything of that kind, but we installed a new plant and thought that plant was good for several years on a flat schedule, but we found it wasn't. They were coming so strong on us we had to do something; we had to meter, and we found that it cut our consumption half; and we found that by metering in a year's time we saved half of the cost of the meters. In other words, it cost approximately $12,000 to meter, and we saved on the cost of power, on the cost of alum, on the cost of filtering, $6,000. The charges were such that we got the same revenue as under the flat-rate schedule, but the saving in the cost of power and supplies was such in two years' time we are going to save the cost of the meters."

5th. Meter Maintenance.—This question appears to be fully

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covered in § 2, wherein the Commission holds that the utility should maintain meters at its own expense.

[5] *6th. Tapping Charge.*—There is probably less uniformity and more obscurity in regard to a "tapping charge" than any other feature of the service. The schedules on file with the Commission vary from one to twenty dollars, and in most cases no further information is given. That is, the Commission has not heretofore been apprised as to what this particular charge covers.

It develops from the investigation that in practice there is the same irregularity as disclosed by the schedules. In some cases the charge is an arbitrary amount assessed for the privilege of connecting with the main. Again, it seems that certain utilities furnish standard connections and install them at the consumer's expense, varying as to the size, and for which the latter pays a flat rate designated as a "tapping charge." It would appear to be the policy to furnish the curb box, curb cock, corporation cock, and clamp (when the latter is used), and perform the labor of connecting with the main. It is important that these fittings be standard to each system, but not necessarily standard to all utilities. If each individual were permitted to make such connections as seemed to him best, there would be no uniformity, and trouble would inevitably follow when it was found necessary to shut the water off or turn it on, for which purpose the utility is equipped with appliances conforming to its underground standards. It therefore follows that it is desirable to have that part of the work done by the utility.

In section 1 of this report the Commission has held that the service pipes are properly chargeable to the consumer. We are not of the opinion, however, that the latter should also pay the cost of tapping the main. The utility is financially benefited every time a tap is made, by adding another permanent customer to its list, and it would seem that the duty of the consumer should not begin until the main has been opened; in other words, when water has been placed at his disposal. It is therefore held that the utility should furnish and install at its own expense the necessary connection with the main, beyond which point the expense devolves upon the consumer; not at an arbitrary figure for the material furnished by the utility, but at actual cost.

It is perhaps needless to say that the Commission disapproves

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the practice of making a charge for the privilege of tapping the main where it is not shown that such charge represents either labor or material, or both.

[6] *7th. Giving Notice.*—While many utilities carry a rule that water would be shut off without notice, no testimony was offered in support of such a rule. It was quite generally agreed that notice should be given in advance whenever it were possible to do so. There will, of course, be emergency cases when this cannot be done.

[7] *8th. Penalizing Delinquents.*—This section has reference to nonpayment of bills, but not to penalties imposed for violation of rules. The utility may protect itself by requiring a deposit in an amount sufficient to cover the estimated usage. It may decline to serve a consumer in arrears by shutting the water off after due notice has been given. Certain utilities demand the payment of various sums in addition to the unpaid bills, before the water will again be turned on.

The utility is entitled to remuneration for the extra expense it has been put to. The charge should be no greater than will protect the company, and must not place an unreasonable burden upon such users as may find themselves temporarily unable to meet their bills promptly. The Commission has authorized in the following order, a maximum charge of $1 in such cases.

[8] *9th. Refusing Service.*—The testimony submitted under this heading would indicate that the Commission contemplated relieving the owner from responsibility and placing it upon the tenant; such is not the case. It is quite the general practice of utilities to contract with the property owner, and when such contracts are entered into, both parties are bound by the provisions thereof, but it has heretofore been brought to our attention that service has been refused when applied for by a renter even after a cash guaranty had been tendered. As already stated the utility is entitled to protection against transients and other unknown applicants, and as in the case of "meter deposit," supra, a deposit may be required in advance. Having furnished security either by cash, bond, or its equivalent, the utility cannot consistently further decline to render service.

The supreme court of Montana, 18 Mont. 199, 32 L.R.A. 697, 56 Am. St. Rep. 574, 44 Pac. 966, State ex rel. Milsted v. Butte

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City Water Co. decided May 4, 1896; mandamus to compel the respondent, defendant, to turn on the water for general use at a certain house in Butte; appeal from second judicial district, Silver Bow county, says:

"A water company organized under the statute for the purpose of supplying a city and its inhabitants with water, and having been granted a franchise for that purpose, assumes obligations of a public nature, and must exercise its powers in a reasonable manner, and therefore, where the inhabitant of a city occupying premises as a tenant, and requiring water for general purposes, but whose lessor has refused to be responsible for water rents, requests the company to turn on the water at his premises and tenders payment in advance, the refusal of the company to do so, under a rule not to supply water to rented premises except on the personal responsibility of the owner, and that if the water was turned on the money tendered would be credited to the owner, is unreasonable."

[9] *10th. Additional Fixtures—Flat Rates.*—When water is furnished at flat rates it is computed on basis of the number of faucets or openings installed. It has been argued that a consumer might put in an additional tap for convenience, and not necessarily use any more water than before. It must be acknowledged that the consumption will be greater on premises where there are ten faucets than where there are only five, if for no other reason than the "convenience;" it therefore follows that the usage will be relatively higher from two taps than from one. As stated, flat rates vary accordingly to presumed consumption, and the consumer is not justified in making any addition thereto without the knowledge and consent of the utility. Should he do so, he becomes indebted to the utility to the extent of the change in fixtures for the length of time in use, at the regular scale of rates provided for such service. If it is shown, however, that the act was deliberate and secretive, the utility might feel that it had cause for an action against the perpetration of fraud.

[10] *11th. Consumers Supplying Others.*—The utility obligates itself to supply the needs of certain premises designated in its contract, and without assigning further reasons it would be manifestly unfair for the consumer to, in addition to his own needs, assume the right to supply others. This does not, of course,

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refer to an occasional bucket of water furnished as an accommodation in emergency cases, but to the general practice of allowing or permitting nonsubscribers free access to its use. To persist in so doing would be sufficient cause for the utility to shut the water off until such time as satisfactory arrangements had been made.

[11] *12th. May the Consumer Turn the Water On?*—When the water has been shut off by the utility, a purpose is involved. It may be to prevent damage being done by flooding, it may be for nonpayment of bills, it may be to permit of inspection or repairs being made, in fact there are a great many reasons, and it should not be turned on except by the utility or by its direction.

[12] *13th. Fines.*—Certain utilities provide in their tariffs that "fines" of various amounts, sometimes designated as "penalties," will be imposed for violation of rules. Earlier in this report the Commission has held that the utility has the right to protection against imposition, and may, for just cause, discontinue service; we are not of the opinion, however, that the authority is vested in the utility to assess a fine. The exercise of such judicial functions is bestowed only upon the courts.

[13] *14th. Extending Mains.*—The necessity for extending mains to reach localities not already served must be determined upon a presentation of facts. No hard and fast rule can be made to govern under all circumstances. Therefore a utility rule specifically setting forth the conditions that must obtain before an extension will be made, could not be approved by the Commission. Such rules should, therefore, be eliminated from the schedules.

At the conclusions of this hearing the utilities' committee submitted a tentative set of rules and regulations intended in a measure, at least, as a solution of the various questions involved in this proceeding, a number of which have been dealt with in the foregoing, and the Commission has expressed its opinion thereon. Others, however, cannot be approved, and furthermore while certain rules and regulations would be necessary in some localities, they would not apply generally to all utilities. It should not be understood that the Commission will decline to authorize rules not inconsistent herewith upon the showing that the same are warranted by local conditions.

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Wherefore, this case being at issue upon the initial motion of the Commission, and having been duly heard and submitted, and full investigation of the matters and things involved having been had, and the Commission having made its report containing its findings of fact and conclusions thereon, which said report is made a part thereof.

It is *ordered*, (a) when a water utility adopts the meter system, meters will be supplied, installed, and maintained at the expense of the utility. If necessary to provide special location, such as meter boxes, it will be the duty of the consumer to do so. Any unusual piping required will also be at the consumer's expense.

Meters which have been installed at consumer's expense will be taken over by the utility at the *pro rata* value, based upon length of time in service and present condition.

[**14, 15**] Upon a proper showing being made to the Commission that a utility is not financially able to assume the burden of acquiring meters already installed, and owned by the consumer, an order will be issued permitting the utility to purchase said meters at the *pro rata* value, based upon length of time in service and present condition, paying for them in instalments, and refunding to consumer by means of a percentage allowance on the monthly or quarterly bills for water consumed. The entire indebtedness, however, must be liquidated within two and one half years.

If a consumer desires a meter installed and the utility is financially unable to comply with request, the consumer may purchase of the utility a standard meter, which the utility will install at its own expense, refunding the purchase price of meter, in the same manner as described in preceding paragraph, allowing interest on the investment to consumer, at the rate of 6 per cent per annum.

(b) If the utility requires a meter deposit in accordance with § 3 of this report, the consumer who was required to make deposit will receive interest thereon at the rate of six per cent per annum.

(c) A utility may protect itself by a reasonable minimum charge based on the size of the meter and consumption of water.

(d) The utility at its own expense must tap the main and

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furnish the corporation cock, the clamp (when necessary), and any other material used or labor furnished in connection with the tapping of the main. Any other material used or labor furnished in connection with the installation of the service pipe or curb box to the property line of the consumer shall be billed against the consumer, not at an arbitrary charge, but at actual cost.

(e) Unless under conditions where it is not possible to do so, the utility must notify the consumer prior to shutting the water off.

(f) When the water has been shut off for cause, the utility shall not charge the consumer a greater sum than $1 for turning it on. This must not be indicated in the schedule as a "penalty," but is presumed to simply reimburse the utility for the extra expense it has been put to.

(g) Should the consumer, not the owner of the property, desire service, and tender the utility a deposit, to guarantee payment of bills for a period not less than the customary billing period of the utility, and in no event less than one month, the utility must accept such deposit and render the service applied for.

(h) A consumer must not add additional fixtures without the consent of the utility, when water is being furnished at flat rates.

(i) Consumers must not, without the consent of the utility, supply water to others.

(j) When the water has been shut off it should not be turned on except by the utility, or by its direction.

(k) The Commission will not authorize the assessment of "fines" or "penalties."

The secretary is directed to serve upon each and every water utility operating in Montana, a true and certified copy of this report and order, and all such utilities must file with the Commission not later than sixty days from receipt thereof, amended schedules in duplicate of rates, rules, and regulations, in conformity with this report and order, and in the form which has already been prescribed by the Commission.

DISSENTING OPINION.

Hall, Commissioner (Docket No. 477): I concur in the

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majority opinion in this case with the exception of that portion relating to who should bear the burden of laying and maintaining the service pipes from the water main to the property line.

I am unable to understand why the consumer should be required to enter the street for the purpose of laying a service pipe, and assume a portion of the basic function of a public utility.

If such a line of reasoning should be followed to its final conclusion, the consumer might just as well be required to construct his portion of the main and leave the utility nothing to do but collect the revenue.

The granting of a franchise to a public service corporation carries with it as its chief consideration the license to enter and occupy the streets and alleys of the city. To my mind, this contemplates a delivery of its wares to the property line of the consumer. The consumer, on the other hand, becomes a trespasser every time he enters the street to begin his excavation.

Again, there is a question of economy involved which should be given some consideration, and beyond this question as between the utility and the consumer, there is a question of public safety. In regard to the question of economy, I wish to particularly call your attention to the testimony of Mr. Carroll, manager of the Butte City Water Company, which is given on page 5 of this report, in which he states that there are 9,500 house connections in Butte, the cost of which he estimates at $50 a connection, or a grand total of $475,000. Presuming, as he states, that it costs the consumer $50 to make his connection, the question comes up as to what it would cost the public service corporation to perform this service as compared to the cost to the individual consumer. The utility has its organization; its trained crew of workmen; it would be able to secure its materials much cheaper on account of the fact that it could contract for the same in much larger quantities that the ordinary merchant engaged in that business. This was brought out forcibly in the evidence of Mr. Pruett, superintendent of the Miles City Water Department, on page 7 of the report, which reads as follows (in testifying about the installation of meters): "The utility in every case is in better position. You can install it for half the price the plumber would charge."

If it is possible for the utility to install meters for one half the

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price the consumer can, why could not the utility also perform the service of laying the service pipes at one half the cost that is now paid by the consumer? But even at one third less, what a tremendous saving to the consumer?

Let us again take the figures of Mr. Carroll, 9,500 connections at $50 a connection—$475,000. Presuming it could be cut one third, it would make a saving to the people of Butte alone of $158,000.

In order to take care of the above, it would be necessary to increase the capitalization in the amount necessary to cover it, and presuming that the present rates are reasonable, they would of necessity be increased to care for the increase. But in any event, it would amount to a large saving to the consumer.

In regard to the question of public safety—the utility, constantly guarded by trained managers, foremen, and learned counsel, is careful to guard its open excavations by the erection of barricades and the setting of red lanterns, but should the laying of the service pipes be laid on the shoulders of the individual, or consumer, the safety of the streets would be left in the hands of the careless, the ignorant and the irresponsible. The fact that the courts might hold the city and the consumer jointly liable for injuries caused, is not any sufficient answer. The prevention of injury to our citizens is, I think, a higher function of government than compensation.

It appears that it has been customary in Montana for the consumer to install his service pipe to the main. This doubtless has been an outgrowth of pioneer days when utility investments were neither stable nor attractive. Our first cities were mining camps of more or less precarious future prospects. The citizen, in his anxiety for the comforts of a convenient and wholesome water supply, was prone to scan the provisions of a proposed franchise in a very liberal manner. He did not find it hard to assume a portion of the burdens of the utility, rather than forego the resultant convenience. Conditions have since undergone a change. Our population has increased, and the discovery that Montana is an agricultural state has afforded stability, and assured a steady future growth. I do not believe it is the duty of this Commission to attempt to cure all the mistakes of the past. The public has heretofore granted franchises and has suf-

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fered the city councils to pass ordinances of rules and regulations concerning the subject of water service, which has contemplated the installation of the service pipes by the consumer. Whether the past custom was wise in its day, or whether the peculiar conditions then existing were a justification, is of no particular concern at this time. I do not feel justified in saying that the utilities should be made to acquire service pipes which have heretofore been installed at the consumer's expense. In the future, however, the utility should bear the burden of laying all service pipes from the main to the property line, and should assume the maintenance and renewals of those heretofore laid.

In this connection it is obvious that the curb box should also be installed at the expense of the utility, its proper place being at the curb which is outside of the consumer's property line. The rules provide that the water can be turned off or on, only by the utility or under its direction. The curb box is placed for the benefit of the utility and for its protection. It is the doorway to its warehouse. It is the padlock by which protection is afforded it in the sale of its merchandise and the collection of its revenue. The consumer is not concerned in the installation of the curb box or the lack of same. With the bare exception of the possibility of a bursting pipe on his premises, he gets no service whatever from such a device and he should not be charged with its cost or maintenance.

WISCONSIN RAILROAD COMMISSION.

MILWAUKEE ELECTRIC RAILWAY & LIGHT COMPANY

v.

CITY OF MILWAUKEE.

Service — Street railway stops — Ordinances.

1. The petition of a street railway company to eliminate certain stops required by a city ordinance, for the sole purpose of reducing running time, but not intended by the company to give to its patrons the benefit of the decrease in headway caused thereby, and the consequent greater seating capacity, was denied except as to a number of clearly unreasonable stops.

Service — Street railway — Stops — Signs — Ordinances.

2. A street railway was permitted to eliminate certain unnecessary stops required by a city ordinance upon the erection of suitable signs P.U.R.1915E.

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at all street intersections where cars do not stop and at all points where stops are made in exception to the provisions of an ordinance requiring far-side stops.

[August 13, 1915.]

APPLICATION of a street railway company to skip certain stops in Milwaukee required by a city ordinance; granted in part and a limited trial of a skip stop plan in different sections of the city, ordered.

The appearances are set out in the opinion.

By the **Commission**: On October 13, 1914, the Milwaukee Electric Railway & Light Company petitioned the Railroad Commission to investigate the places for stopping its cars on its various lines in Milwaukee, and to determine and by order prescribe such stopping places to take on and discharge passengers as will accord with adequate service and shall be reasonable and proper under all circumstances.

The railway company having announced its intention of eliminating a large number of stops on its various lines, protests were filed by numerous residents in various parts of Milwaukee, alleging that the elimination of the stops amounted to discrimination, and would greatly inconvenience the patrons of the road.

Hearings were held in Milwaukee. The city of Milwaukee appeared and opposed the installation of the so-called "skip stop" plan. The appearances were Miller, Mack, & Fairchild by James B. Blake, on behalf of the Milwaukee Electric Railway & Light Company, and Clifton Williams, assistant city attorney, on behalf of the city of Milwaukee.

The petition alleges that the distance to be traveled and the circumstances with respect to transportation over petitioner's system in the city of Milwaukee are such that the stopping of petitioner's cars at every street intersection or crossing will interfere with and prevent the furnishing of adequate service, and that it is necessary, in order that adequate service be furnished in the city of Milwaukee, that the cars be stopped only at certain designated street corners, and not at every street crossing. The petition also sets forth the ordinance hereinafter referred to, and alleges that if such ordinance be or can be construed to require street railway cars to stop at every street crossing where passen-

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gers might desire to board or alight from cars, such ordinance would interfere with the present adequate service over the petitioner's railway system in Milwaukee, and to such extent such ordinance is and would become unreasonable and void.

The reasons given for requesting a change in the stopping points were that the service would be benefited to a great extent by reducing the running time of cars on the lines where it was proposed to eliminate stops. It appears from the testimony submitted by the petitioner that an attempt was made to reduce the running time of cars on the South Milwaukee line on West Water street, Reed street, Clinton street, and Kinnickinnic avenue by cutting out certain stops, but that the city put a stop to this practice by instructing the police department to arrest members of car crews who refused or failed to stop when signaled on the streets mentioned. This action was taken under § 1228 of the city ordinance, which specifies that all cars must stop on signal within the so-called near-side zone on the near side of street intersections, and on the far side outside of the so-called near-side zone, except at certain points specifically exempted in the ordinance. The petitioner discontinued running the stops on these two streets, and filed the petition with the Railroad Commission as heretofore mentioned.

The scheme of designated stops as outlined by the petitioner provided for stopping cars for taking on and discharging passengers at all crossings within the present near-side zone, at all points where lines diverge or cross, at all crossings in the vicinity of schoolhouses, hospitals, large factories, at all street intersections in the vicinity of a number of business houses and establishments, and at all fire department crossings outside of the near-side zone. With the above exceptions the plan was to skip approximately every second street crossing where such elimination did not result in increasing the distance between stops to over about 700 feet. The general plan as outlined by petitioner for stops outside of the near-side zone is based on the following considerations:

1. From the standpoint of safety, stops should be made where tracks cross or diverge, at fire department crossings, and at crossings in the vicinity of schoolhouses.

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2. Stops should be made at all transfer points for convenience in transferring.

3. The intervening distance between stops should not exceed a certain maximum nor be less than a certain minimum.

4. The third or the consideration of distance should be largely controlled by the number of passengers using the respective stops.

At the hearings at which the patrons of the Milwaukee Electric Railway & Light Company had an opportunity of testifying for or against the plan of designated stops as outlined above, the following general objections were offered:

It was shown that in numerous cases business houses of a similar kind are maintained at corners one block apart, and that under the proposed scheme of stops the owners of the business houses at the corners where the stop was to be eliminated would be discriminated against in favor of his competitor at the next corner where the stop was to be made, and that real estate values would be affected.

The plan submitted contemplated eliminating practically all stops within one block of intersections or turnouts. The objections offered to the elimination of these stops were that, in addition to requiring some of the patrons to walk approximately an extra block, it would necessitate crossing tracks, which was considered by some witnesses more or less dangerous. This element of danger would apply to those boarding or leaving cars in one direction only.

Considerable objection was offered by those interested in going to and coming from certain schools, hospitals, etc. While the proposed plan provided for stops at or near most of these institutions, others were not provided for.

A general objection was made against the proposed scheme in that some patrons would be required to walk a block more than they are now required to do.

Considerable testimony was offered to the effect that some of the stops it was proposed to eliminate were used by large numbers of patrons.

Objection was made to increasing the rate of speed over street intersections. It was claimed by some that the cars were now run at as high a rate as was consistent with safety.

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Some objection was made on the ground that the petitioner, and not the patrons, would be benefited by the proposed plan.

In addition to the objections offered as outlined above, the Commission received petitions protesting against the proposed system of designated stops signed by approximately 2,400 patrons. These petitions were circulated by civic associations, aldermen, and by private individuals.

Practically all the aldermen of the city canvassed their respective wards, and testified in regard to the feeling of their constituents. Without exception, they reported that their constituents were opposed to the proposed plan.

While the majority of those testifying were opposed to the plan, some fifteen or twenty patrons were of the opinion that the scheme had considerable merit in that it would reduce the time spent on cars which could be advantageously used at home or at their place of business. They agreed that in case a skip-stop plan was adopted the stops to be eliminated should be selected with a great deal of care.

While many objected to the general scheme of eliminating stops and arranging for designated stops, nearly all agreed that there were many stops which might very well be eliminated, and which stops were in general designated "freak stops." These are at points where streets cross at an angle, where they jog in crossing the street on which the car line is situated, where they extend in one direction only, and where streets are within 150 or 200 feet of each other. There are a number of alleys which have been changed into streets, and which alleys or streets are a very short distance from the regularly laid-out streets. It was agreed by witnesses that it was not necessary to stop at some of these points. There are a number of existing stopping points where streets are not open for traffic, or where stops have been arranged for in the middle of a block, and it was generally agreed that some of these stops might very well be eliminated.

In regard to the saving in time, which it was claimed by the petitioner would result from putting this scheme into effect, a number of witnesses for respondent called attention to the fact that more time could be saved by reducing the lay-over time at the ends of the various runs, than by cutting out stops. Petitioner submitted a study showing the time that would be saved between

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the ends of the various lines and by sections of lines. The saving in time which it is claimed by the petitioner would result from this scheme ranges from one minute on the Third street, First avenue, Farwell and Wells lines to seven minutes on the Lisbon and Pabst avenue lines. The number of stops that were to be eliminated ranged from two on the Third street to thirty on the Center street line. The number of stops petitioner proposes to eliminate, and the number of minutes to be saved on each line, is shown in the following table:

	Stops Petitioner Proposes to Eliminate.	Minutes Saved.
Burnham	27	5
Center	30	3
Clybourn	11	4
Delaware	17	2
Eighth Ave.	13	3
Eighth St.	12	3
Farwell	10	4
First Ave.	8	1
Fond du Lac	15	4
Holton	5	2
Howell	15	5
Lisbon	19	7
Mitchell	14	3
National	25	4
North	19	4
Oakland	13	2
Pabst	23	7
State	8	5
Third St.	2	1
35th St.	4	3
12th St.	12	6
27th St.	4	4
Viaduct-Muskego	10	3
Vliet	17	5
Wells	9	1

Before hearings were held to allow patrons to testify in this case, considerable publicity was given the scheme by articles in the daily press and by the pamphlet "Of Public Interest" published and issued by the petitioner. The advantages were in this manner brought before the public, and those who testified had every opportunity of familiarizing themselves with the proposed plan before testifying. This was especially true of the aldermen who objected to the scheme.

[1] It is generally conceded that good service depends upon (1) safety; (2) headway; (3) seating capacity; (4) speed; (5)

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convenience of stopping places; (6) miscellaneous, such as sanitary conditions, light, heat, and ventilation of cars, convenience of equipment, and notice to public in relation to service, and courtesy of employees. These items are given in the order of their importance, although there may be considerable difference of opinion as to the relative importance of each subdivision. The patrons of a utility are interested in a reduction in headway (time interval between cars), an increase in seating capacity, an increase in speed consistent with safety, an increase in the number of stopping points, and an increase in all of the items mentioned in the miscellaneous group. This controversy deals essentially with stopping points, and while it is true that a decrease in the number of stopping points tends to an increase in speed, seating capacity, and a decrease in headway in case the number of cars in service remains the same, it is also true that in case the number of cars is reduced so as to furnish the same seating capacity, the speed would be increased while the headway would remain practically the same. A decrease in the number of stops makes for less efficient service as far as convenience in boarding and leaving cars is concerned, and unless the traveling public are assured of substantial advantages as to speed, seating capacity, and headway, they are not very apt to agree to a curtailment of the number of stopping places. Judging from the evidence submitted by the respondent in this case, the patrons of the petitioner company feel that the slight advantage in speed which is promised by the company would not make up for the inconvenience they would be put to by the reduction in the number of stopping places.

An increased speed is the only advantage which the petitioners offer for the reduction in the number of stopping points. If the respondent had been offered, in addition to an increase in speed, an increased seating capacity and a decreased headway, there is little question but what they would have looked upon this proposed scheme more favorably.

As far as the petitioner company is concerned, the installation of this system of designated stops would undoubtedly mean greater speed, the same headway and seating capacity as is now furnished, and would result in a decreased number of car hours and a decrease in operating expenses. This, however, would be true

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only when the amount of time saved is equivalent to the time spacing between cars on the schedule now in force, or in other words, for any particular line the aggregate of time saved would necessarily have to be great enough to allow of the taking off of one car before any economies would be had. An aggregate saving in time less than that sufficient to allow the taking off of one car would merely result in increasing the lay over of cars at the ends of the line. On some of the lines the number of cars would undoubtedly be reduced after the proposed scheme were put in operation, without violation of the standards of service prescribed by the Commission. On other lines, where the round trip saving in time per car is less than the present time spacing between cars, it would be impossible to make any reduction in the number of cars run.

The total number of possible stops by lines under the present is 1,290. The total number of stops under the proposed system is 963, which amounts to 25.4 per cent reduction in the total number of possible stops. Obviously each car does not stop at each designated point under the present system, nor would they stop at each designated point under the proposed system. The average number of stops per trip in the aggregate of all lines is 492, which is 45.8 per cent of the total number of possible stops. The average number of stops which it would be necessary to make under the proposed system cannot be determined without a trial of the proposed scheme, but the percentage of stops actually made to the possible stops would be considerably higher under the proposed than under the present arrangement.

The proposed scheme of designated stops would not, in our opinion, add anything to the ultimate safety, and we also find so far as headway is concerned there would be the same interval of time between cars as at present, and there would be no advantage to patrons so far as headway is concerned. There would, however, be some economies in operation. On some sections of the various lines, running time may be decreased without a reduction of stops, resulting in more adequate service, and in some instances such changes have been made since this action was started. We find that a considerable number of so-called "freak stops" and other special stops heretofore mentioned and specially set forth in the order hereinafter made may be eliminated with

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considerable advantage to all concerned, and without any serious disadvantage or inconvenience to the patrons of the road. With the elimination of these stops the adequacy of the service will be increased.

In attempting to arrive at just what should be considered adequate service as far as stopping points are concerned, we have given considerable weight to the wishes of the patrons of the petitioner company as expressed at the hearing. However, testimony of some fifteen or twenty prominent citizens who testified in favor of an extended skip-stop plan was also considered. Different schemes of eliminating stops or designating stops are now in force in several cities, and in others various plans are now being tried out. At the last hearing in this case the city of Milwaukee, through the assistant city attorney representing them, requested that a skip-stop plan be given a trial on three lines in different sections of the city to be designated by the Commission, for a period of three months. After this plan has been tried out the Commission will ascertain the sentiment of the patrons of the lines affected, either by a system of balloting by the patrons or by public hearing, or both, and then take such action as may be warranted as to said three lines. If the plan proves successful and satisfactory to the patrons, the Commission reserves the right to reconsider this order as to any other lines.

[2] Our order will therefore provide for the elimination of a number of so-called "freak stops" and the changing of others from one side of the street to the other. This means that combination stops are to be arranged for at various points where a near-side stop on one street will practically mean a far-side stop for the adjacent street.

In order that there will be no confusion, and that patrons will understand just where stops are to be made, signs should be placed at all street intersections where cars do not stop and at all points where stops are made in exception to the provisions of the ordinance requiring far-side stops.

The order to be entered therefore will, unless it shall develop from experience that the skip-stop plan is meritorious and satisfactory to patrons, dispose of all matters referred to in the petition except as to the three lines on which the designated stop plan as suggested by the assistant city attorney of the city of Mil-

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waukee will be tried out. As to all except these three lines, we hereby find that adequate service requires stops to be made and others to be eliminated as hereinafter in the order required in §§ I., II., and III., thereof, and that it is reasonable and proper that the stops in said section specified to be made or eliminated be so made and eliminated as in said order provided. As to said three lines it is also found that adequate service requires the elimination of the so-called "freak stops" as in §§ I., II., and III. of said order provided, but as to whether additional stops should be eliminated on these three lines, no finding will be made until after the trial provided for in the order.

Railroad Commission of Wisconsin, by Walter Alexander, Halford Erickson, and Carl D. Jackson, Commissioners.

WISCONSIN RAILROAD COMMISSION.

MILWAUKEE LIGHT, HEAT, & TRACTION COMPANY et al.

v.

CITY OF CUDAHY.

MILWAUKEE LIGHT, HEAT, & TRACTION COMPANY et al.

v.

CITY OF SOUTH MILWAUKEE.

Service — Street railways — Stops.

1. In order to facilitate the movement of traffic, cars passing over a fire crossing at which they are required to stop were permitted to substitute such place as a regular stopping place for passengers, although the original stop nearby would better serve the neighborhood.

Service — Interurban cars — Stops.

2. Interurban cars, when substituted without notice for suburban car service, on the schedule of a railroad company, were required to make all stops designated for both.

Service — Commission powers — Ordinance stops.

3. Municipal ordinances which require interurban cars operated therein to stop at all corners on signal are in contravention of the public interest and an unreasonable interference with the exercise of the powers of the Commission to require a railroad to render adequate public service.

Service — Street railways — Speed restrictions.

4. A requirement in a city ordinance that cars shall not exceed a

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speed of 4 miles per hour on a bridge and within 100 feet of either end thereof was held reasonable on account of the restrictive area available for traffic thereon, but a requirement that the speed should not exceed 6 miles per hour in a certain portion of one city, and a requirement that the speed should not exceed 15 miles per hour in another city, were held unreasonable; and a limit of 20 miles per hour was allowed.

Service — Street railways — Speed limitations — Automobiles.

5. The fact that an ordinance limiting the operation of automobiles in a city to a certain speed is reasonable does not make an ordinance limiting the operation of street cars to the same speed reasonable, since conditions of operation are entirely different.

Service — Street railways — Preference in method of facilitating traffic.

6. Street railways should not be refused relief from burdensome speed and stop regulations for the purpose of bettering their service, on the ground that the cars are delayed by complicated fare-zone tickets and pay-as-you-enter cars, since the companies should not be refused permission to improve their service in one respect for the reason that other improvements might be made in the method of operation.

[August 28, 1915.]

PETITION by street railway companies to be relieved from the operation of certain ordinances regulating speed and stops; granted in part; companies required to limit the speed of all cars operated in the cities of Cudahy and South Milwaukee to 20 miles per hour a maximum attained speed and to 8 miles per hour in front of any school grounds, and 4 miles upon and within 100 feet of each end of the South Milwaukee bridge.

The appearances are set out in the opinion.

By the **Commission**: The separate petitions in the above-entitled matters allege in substance that certain ordinances enacted respectively by the city of Cudahy and the city of South Milwaukee with reference to the speed of cars and to stopping places in those cities interfere with the furnishing of adequate and proper service to the patrons of petitioners' suburban and interurban railway lines. The Commission is therefore asked to investigate the facts, and prescribe such schedule, speed, and stopping places, as shall be just and proper under all the circumstances.

The city of Cudahy and the city of South Milwaukee, in separate answers, allege in substance that the ordinances referred to by the petitioners do not in any way interfere with the

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furnishing of adequate service by the petitioners, and that they are reasonable and valid. The dismissal of the petitions is therefore asked.

Hearings were held at Milwaukee on November 2 and 23, 1914, and at Cudahy and South Milwaukee on November 21, 1914. The cases were argued orally before the Commission at Madison on May 27, 1915. The petitioners were represented by James D. Shaw of Van Dyke, Shaw, Muskat, & Van Dyke, and R. B. Stearns; George C. Dutcher appeared for the city of Cudahy, and W. J. Riley, for the city of South Milwaukee.

The salient sections of the Cudahy ordinance are as follows:

"Section 1. No person or corporation owning or operating any street railway within the limits of the city of Cudahy, nor any agent, servant, or employee of such person or corporation, shall run or operate, or cause to be run or operated, any car or vehicle upon said street railway, propelled by electricity, at a rate of speed not exceeding 6 miles per hour while running through said city within the limits thereof."

"Section 3. It shall be the duty of every person or corporation, agent, servant, or employee of such person or corporation, owning or operating any street railway within the limits of said city, to stop its cars upon any street crossing within the limits of said city, when signaled so to do by a person desiring to alight upon such car, and to so operate its said cars while running through said city of Cudahy so that passengers may be enabled to get on or off the said cars whenever the agent, servant, or employee in charge thereof is signaled by said passenger."

This ordinance was modified subsequent to the filing of the petitions herein to provide a speed limit of 15 miles per hour within the city and a speed limit of 8 miles per hour in front of school grounds, thus conforming to the limits fixed for automobiles by § 1636–49 of the statutes.

The salient sections of the South Milwaukee ordinance are as follows:

"Section 1. No person or corporation owning or operating any street railway within the limits of the city of South Milwaukee, nor any agent, servant, or employee of such person

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or corporation, shall run or operate or cause to be run or operated any car or vehicle upon said street railway at a rate of speed exceeding six (6) miles per hour on North Chicago and Tenth avenues between the intersection of Hawthorne and North Chicago avenues and the intersection of the Chicago & Northwestern railway's spur track and Tenth avenue, nor at a speed exceeding four (4) miles per hour between points within one hundred (100) feet of either side of any bridge crossed by such street railway in said city of South Milwaukee."

"Section 3. It shall be the duty of every person, agent, servant, or employee of such person or corporation who shall have charge of the operation of any car or vehicle upon any such street railway in said city of South Milwaukee to stop on the farther side of any street crossing intersecting such street railway, (and at points along unplatted property where the common council of said city of South Milwaukee may direct, said points to be not less than 600 feet apart), when signaled to do so by person or persons wishing to leave or enter the said car or vehicle."

Early in September, 1914, the street railway companies introduced a new schedule for their interurban and suburban cars in the cities of Cudahy and South Milwaukee, eliminating a number of stopping places. This action was taken in accordance with the general plans for introducing the so-called skip-stop system on the Milwaukee-Racine-Kenosha interurban line, and was based upon a study of the traffic and other conditions on this line. Conductors and motormen were subsequently arrested for violating the ordinances above quoted upon refusing to stop cars at the signal of patrons at street corners other than those designated as stopping places. The company thereupon restored the eliminated stops and filed the present complaints with the Commission.

At the hearings the companies submitted a list of the designated stops which they deem it advisable to retain in the cities of Cudahy and South Milwaukee. These stops and the distance between them are listed in the following table:

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Cudahy.

Designated Stop.	Distance from Nearest Stop North.
XX Cudahy Depot	4,176 feet
XX Layton	1,508 "
XX Barnard	663 "
XX Pabst	529 "
XX Holmes	792 "
XX Pulaski	994 "
XX Underwood	319 "
XX Railroad Crossing	986 "
XX Grange	1,014 "

South Milwaukee.

Designated Stop.	Distance from Nearest Stop North.
XX College	1,240 feet
X Badger Foundry	850 "
XX Park	1,007 "
X Elm	647 "
XX Beech	734 "
X Cherry	653 "
XX Hawthorne	781 "
XX Rawson	926 "
X Minnesota	1,005 "
XX 10th and Milwaukee	647 "
X Milwaukee and 8th	1,063 "
X Milwaukee and 6th	1,032 "
X 5th and Madison	592 "
X 5th and Marquette	656 "
X 5th and Marshall	634 "
X 5th and Marion	644 "
X 5th and Sherman	2,320 "
X 5th and Clark	1,392 "
X Terminus	928 "
XXX Waiting Station	124 "
XXX Chicago Road and Marquette	2,250 "
XXX Chicago Road and Marion	1,276 "
XXX Chicago Road and Drexel	1,363 "
XXX South Limits	2,720 "

X Indicates that stop is for suburban cars only.
XX Indicates that stop is for both suburban and interurban cars.
XXX Indicates that stop is for interurban cars only, since suburban cars do not pass these points.

The greater portion of the testimony which was introduced by the cities of Cudahy and South Milwaukee relates to the reasonableness of the designated stop plan in general, and little direct testimony was offered concerning the public necessity for the specific stops proposed to be eliminated. In arriving at a conclusion as to the merits of each stop, it was necessary to supplement the testimony and the exhibits offered by the com-

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panies by an inspection of the line and observation of the traffic conditions.

In the city of Cudahy it appears necessary to retain the stop at Van Norman avenue which was established subsequent to the filing of the petitions herein, and which is located about midway between the Cudahy depot and the north city limits.

[1] Witnesses objected to the discontinuance of the corner of Packard and Plankington avenues as a stopping point. The stop at Layton avenue selected by the companies is a necessary one on account of the use of Layton avenue by the fire department, and this stop is only 399 feet south of Plankington avenue. If Layton avenue were not a fire crossing, the logical place for a stop would be Plankington avenue, which would better serve the settlement located north and east. Under the circumstances we believe that satisfactory service can be secured by stopping south-bound cars on the near side of Layton avenue and stopping north-bound cars on the near side of Layton avenue and on the far side of the corner of Packard and Plankington avenues. This arrangement will protect Layton avenue as a fire crossing, and will make it unnecessary for patrons living north of Plankington avenue to cross Layton avenue for service.

Underwood avenue was formerly a fare-zone limit, and as such was a necessary stop. At present, however, the fare-zone limit is Grange avenue or the south city limits. It appears that Hammond avenue would be a more central and satisfactory intermediate stop between Pulaski avenue and the railroad crossing.

With the changes and additions indicated above, it is the opinion of the Commission that the stops suggested by the companies in Cudahy are sufficient for adequate service under existing conditions.

In the city of South Milwaukee certain stops in addition to those suggested by the companies appear to be necessary. The suburban cars should stop at Ninth and Milwaukee and at Seventh and Milwaukee, and a stop should be placed at Fifth and Montana instead of at Fifth and Marquette as suggested. Interurban cars should stop at Tenth and Marquette, at Chicago Road and Marshall, at Chicago Road and Manistique, and at the stopping place known as Peterson's or Lorig's. With these changes and additions, the stops suggested by the companies in

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South Milwaukee are, in the opinion of the Commission, sufficient for adequate service under the existing conditions.

[2] During certain periods of the day when the traffic is light, interurban cars are operated on the same schedule and substituted for certain of the suburban cars. If this practice is continued, stops should be made by such interurban cars at all points designated exclusively for suburban cars in addition to the regular interurban stops. In the present case suburban stops on the line traversed by the interurban cars are Badger Foundry, Elm avenue, Cherry avenue, and Minnesota avenue. All interurban cars which are substituted for suburban cars should stop at these points.

[3] The companies urge that the elimination of all unnecessary stops will improve the service by shortening the schedule and minimizing the interruption to through travel. This principle has been recognized by the Commission as applicable to interurban service in Racine v. Milwaukee Electric R. & Light Co. 12 Wis. R. C. R. 388; Kenosha v. Kenosha Electric R. Co. 12 Wis. R. C. R. 508; and Waukesha v. Milwaukee Electric R. & Light Co. 13 Wis. R. C. R. 89. There appear to be no reasons for withdrawing from the position there taken. From the standpoint of adequate service, the elimination of some stops is not only within the bounds of reason, but is advantageous for the traveling public. The city ordinances which require cars to stop on all corners on signal are therefore in contravention of the public interest. The Commission is empowered to require a public service corporation to render adequate service, and it cannot be restricted in the exercise of this authority by conflicting municipal enactments.

[4,5] The railway companies also object to the speed restrictions imposed by the ordinances above quoted. The requirement of the South Milwaukee ordinance that cars shall not exceed a speed of 4 miles per hour on the bridge and within 100 feet of either and thereof appears to be reasonable on account of the restricted area available for vehicle traffic over the bridge. The other requirement that the speed of cars shall not exceed 6 miles per hour in a certain portion of the city, and the requirements of the Cudahy ordinance that the speed of cars shall not

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exceed 15 miles per hour in the city, are not, in the opinion of the Commission, reasonable requirements.

Counsel for Cudahy argues that the Cudahy requirements conform to the limits set for automobiles in § 1636–49 of the statutes, and that what is reasonable for automobiles is reasonable for the suburban and interurban cars. We are inclined to believe, however, that for purposes of speed regulation, automobiles and street cars should be separately classified. There are sufficiently obvious reasons why street cars may be allowed with safety to attain a greater speed than automobiles. Cars are operated on rails and are not dependent upon the human hand as to their course, whereas automobiles may swerve through carelessness or may skid on slippery pavements. Thus pedestrians and travelers in vehicles have little difficulty in keeping clear of the street car's path. Motormen report defects in car equipment at the end of each day's run. Thus any necessity for adjustment of brakes is almost sure to be noticed, and the necessary repairs made by the shop force employed for that purpose. Automobiles are ordinarily less regularly inspected. Street cars are apt to be more noisy in operation, thus giving more warning of their approach. Another important consideration is that motormen in most cases have been over the line very frequently and are thoroughly familiar with dangerous street crossings or other points involving hazard. Many automobile drivers, on the other hand, have been in the vicinity infrequently.

To limit the attained speed of cars to 15 miles per hour in the cities of Cudahy and South Milwaukee would seriously hamper the movement of interurban cars. In large cities cars frequently attain a much higher speed without serious results, and if a higher speed is permissible in large cities, it must also be permissible in the less densely populated communities of Cudahy and South Milwaukee. In our judgment it is necessary to permit an attained speed of 20 miles per hour in order to secure reasonably adequate interurban service in point of speed.

[6] Witnesses asserted that the movement of cars in Cudahy and South Milwaukee is greatly delayed on account of the complicated fare-zone tickets and the pay-as-you-enter system of operation, and it was urged that by a return to the old system

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more time could be saved than by the skip-stop plan. It is doubtless true that the use of fare-zone tickets and the introduction of prepayment operation have caused delay, especially during the period of adjustment before patrons have become accustomed to the new conditions; but this matter is entirely separate from the question here under discussion. The railway companies should not be refused permission to improve their service in one respect for the reason that other improvements might be made in the method of operation.

In the light of the testimony and upon investigation, we find that the provisions of the ordinances above quoted which require the stopping of cars on signal at all street crossings in Cudahy and South Milwaukee, and which limit the speed of cars in Cudahy and South Milwaukee, constitute an unreasonable interference with the furnishing of adequate service by the petitioning companies; and, that the discontinuation of the existing stops which are not included in the list given in the order herein, and the change in the speed limitations specified therein, are necessary for reasonably adequate service.

Railroad Commission of Wisconsin by Walter Alexander, Halford Erickson, and Carl D. Jackson, Commissioners.

IDAHO PUBLIC UTILITIES COMMISSION.

J. T. WISEMAN et al.

v.

RUPERT ELECTRIC COMPANY.

[Case No. F-96; Order No. 274.]

Pleading — Verification of complaint — Dismissal.

A complaint to the Idaho Public Utilities Commission will be dismissed where it is not verified as required by their rules and regulations.

[September 1, 1915.]

APPLICATION to dismiss an unverified complaint; granted.

By the Commission: This cause came on for determination upon the application of the said defendant to dismiss the com-

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plaint of the said complainants for various reasons, the principal one being that the complaint is not verified in accordance with the rules and regulations of the Public Utilities Commission.

It appears to the Commission that said application to dismiss the complaint should be granted upon the grounds above stated, for the reason that the rules and regulations of the Public Utilities Commission as prescribed in subdivision (a) of paragraph 3 of rule IV. require all complaints to be verified.

In regard to the other objections urged in the motion of the defendant to dismiss said complaint, the Commission is of the opinion that the objections referred to in said application should be corrected in the amended complaint to be filed.

ILLINOIS PUBLIC UTILITIES COMMISSION.

GEORGE M. CREUTZ et al.

v.

WESTERN UNITED GAS & ELECTRIC COMPANY.

[No. 3862.]

Service — Gas — Extension — Cost to new consumer.

A rule of a gas utility requiring new consumers to pay for the cost of extending the gas main in excess of a distance of 300 feet per consumer, which is rebated as additional consumers are connected to the extension, was held reasonable and equitable as applied to a village containing scattered residences.

[September 9, 1915.]

COMPLAINT by residents of the Village of Ardmore as to practices of the Western United Gas & Electric Company relative to installation of extensions to its gas-main system; dismissed.

The appearances are set out in the opinion.

Commissioner Shaw: The petitioners herein, George M. Creutz and C. E. Logus, residents and property owners in the village of Ardmore, county of Du Page, under date of May 17, 1915, filed a complaint in which it is alleged that the respondent herein had established certain unfairly discriminatory and arbitrary practices relative to the installation of extensions to its gas-main system in the said village of Ardmore.

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A hearing was held in Chicago on June 21, 1915, and C. E. Logus appeared in behalf of the petitioners, and Benjamin P. Alschuler, as counsel, appeared in behalf of the respondent. Certain testimony had been taken when it developed that the respondent was not fully and properly qualified as a public utility subject to the jurisdiction of this Commission, owing to the fact that there had been filed no application requesting authority for the respondent to transact business in the recently incorporated village of Ardmore. The hearing was continued until such time as the said application could be filed and acted upon.

A hearing in regard to the respondent's application for a certificate of convenience and necessity (case 3966) was held in Chicago on July 26, 1915, with the same appearances. Both cases (Nos. 3662 and 3966), for the purpose of the hearing, were consolidated; but the cases are here separated in order that individual orders may be entered in each cause. From the original bill of complaint and from the evidence introduced in the hearings of June 21, 1915, and July 26, 1915, the nature of the controversy may be stated as follows:

The respondent, which in time past had installed a small gas distribution system in the then unincorporated village of Ardmore, is now engaged in the construction of extensive additions to the gas mains of the now incorporated village. The new extensions, however, are not planned to reach all the homes in the village, and the petitioners herein own homes which will be without gas service. The bone of contention is to be found in a certain rule which has been adopted by the respondent and which has been fixed in a franchise granted by the village. The rule in question specifies that an extension of an existing gas main will be installed by the respondent, gratis to the consumer, whenever the distance to be run does not exceed 300 feet per consumer, *i. e.*, 600 feet for two consumers, 900 feet for three consumers, etc. Beyond the limit of free extension, a new consumer is billed for an excess cost, which is rebated as additional consumers may be connected to the extension. The rule is identical with a published conference rule of this Commission, except that the Commission's rule requires only 200 feet of extension per new consumer.

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The respondent contended (1) that, to extend its mains to serve the homes of the petitioners, the limit of free extension would be exceeded; (2) that the petitioners should pay for the excess cost of mains above the free limit; (3) that it could not possibly extend the mains to the homes of the petitioners without exercising unjust discrimination; (4) that the revenue to be derived from an entirely free extension to the homes of the petitioners would be entirely inadequate to pay interest on the increased investment; and (5) that the prospect for additional future business to be derived from the extensions was not bright. The petitioners contend that the respondent's practice is to make a long extension, if the total number of consumers which can be connected to the extension would justify the necessary total length under the 300-foot rule. The petitioners argued that, by such a method of computation, the entire village of Ardmore should be taken as a unit, and the majority of the homes in the town could be served without exceeding an average of 300 feet of main to the consumer.

It appears that the rule of the respondent, as fixed by the village ordinance, is reasonable and equitable in this case. The village of Ardmore seems to be a sparsely settled community, and the homes of the citizens are more or less scattered. It would be unreasonable to demand that the respondent install gas mains to reach each and every individual home in the village.

It is therefore *ordered* that the complaint in case No. 3882 be and the same is hereby dismissed.

By order of the Commission, at Springfield, Illinois, this 9th day of September, 1915.

ILLINOIS PUBLIC UTILITIES COMMISSION.

IN RE DE KALB-SYCAMORE ELECTRIC COMPANY.

[No. 4114.]

Rates — Steam heat — When meter rate preferable to flat rate.

A meter rate for steam heat, based on the amount of steam condensed in the consumer's premises as measured by the water of condensation, is more just to both the consumer and the utility than a

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flat rate, based on the amount of radiation installed, which leads to excessive use and waste of steam.

[September 9, 1915.]

APPLICATION by the De Kalb-Sycamore Electric Company for authority to withdraw flat rates for steam heating service at De Kalb; granted.

The appearances are set out in the opinion.

Commissioner **Shaw**: The petitioner herein, the De Kalb-Sycamore Electric Company, a corporation organized under the laws of the state of Illinois, has filed an application for authority to withdraw the flat-rate charge for steam heating service that is now in force in De Kalb.

A hearing was held in Chicago on August 23, 1915, and Mr. W. C. Sparks, vice president of the company, appeared in support of the petition. No one appeared in opposition to the petition, and the record shows that the mayor of De Kalb was duly notified. From the petition and evidence the nature of and reasons for the request may be stated as follows:

The steam heating system to De Kalb is operated in conjunction with the electric generating plant, thereby allowing of the utilization of the exhaust steam from the prime movers. This steam is carried through insulated underground pipes into the consumers' premises, and condensed in the radiators. The measure of the cost of service has been made in the past in two ways: (1) on the amount of radiation installed, and (2) on the amount of steam condensed in the consumers' premises as measured by the water of condensation. The first is the flat-rate charge and the second the meter rate. The object of the petition is to eliminate the flat-rate charge from the schedule of rates, and to place all consumers on the meter basis. The petitioner stated that this would probably effect a slight reduction in the revenue.

Under the meter rate any reduction of steam consumption effected by the consumer is reflected in the charge for service. Under the flat rate this is not possible, for the charge is not based on the actual consumption. This basis for charging leads to excessive use and waste of steam, as there is neither incentive for economy nor penalty for waste. From this it is evident that,

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of the two, the meter basis is the more just for both the consumer and utility. It appears that the petitioner's request is reasonable, and that the best interests of the utility and the consumers would be served by granting the prayer of the petitioner.

It is therefore *ordered* that the schedule of flat rates and charges for steam heat now in force in the city of De Kalb be withdrawn.

No valuation having been made, the Commission is not rendering a decision on the reasonableness of the meter rates now in force and on file with the Commission.

By order of the Commission at Springfield, Illinois, this 9th day of September, 1915.

MISSOURI PUBLIC SERVICE COMMISSION.

A. W. REID et al.

v.

CHICAGO, ROCK ISLAND, & PACIFIC RAILWAY COMPANY.

[Case No. 594.]

Commerce — Stoppage of interstate train.

1. Interstate commerce is not improperly interfered with by an order of a Public Service Commission requiring the stoppage of interstate passenger trains at a village or the rearrangement of their schedules in order that adequate local train service and facilities may be furnished.

Service — Railroads — Stopping of interstate passenger train.

2. The stopping of a passenger train only in the morning was held inadequate service and insufficient for the public convenience of the inhabitants of a village of 300 situated in the midst of a populous community, and the railroad company was required also to stop an interstate passenger train at night at the village, it appearing that such service had been maintained for many years until recently, and that it could be rendered at slight cost and with little interference with the through schedule or interstate traffic.

Service — Railroads — Stopping of interstate passenger trains.

3. The Missouri Commission in ordering that an interstate passenger train stop at a particular station will not consider the possible effect upon interstate traffic of other stations, as a result of the order, securing stops, until the advisability of making such stops is presented to the Commission for determination.

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Service — Railroads — Night station agent.

4. The maintenance of a night station agent at a village of 300 inhabitants was held necessary for the proper accommodation of the public using night trains.

[June 29, 1915.]

COMPLAINT that passenger facilities furnished the inhabitants of Winston are inadequate; sustained and ordered that an additional train stop at the station and that a night station agent be maintained.

Appearances: G. A. McWilliams for complainants; Paul E. Walker and E. J. Collins for defendant.

By the **Commission**: This is a complaint of A. W. Reid and thirty other citizens of this state residing in or near the town of Winston, Daviess county, Missouri, against the Chicago, Rock Island, & Pacific Railway Company, charging inadequacy of train service between Kansas City and St. Joseph, Missouri, and Winston, and intermediate points, and inadequacy of station service for the accommodation of passengers at the said town of Winston, and praying that the defendant company be required to regularly stop at Winston an additional passenger train, *viz.*, the defendant's daily east bound passenger train No. 12, due at Winston at 7:58 o'clock in the evening; and also that a night agent or helper be kept by the defendant at its said Winston station to assist and serve the passengers using said train No. 12, and defendant's west bound passenger train No. 57, due at 6:14 o'clock in the morning at such station.

The defendant filed answer denying such inadequacy of train and station service, and alleging that while its said train No. 12 was previously scheduled as a local train and as such regularly stopped at Winston and other local stations, yet that upon the shortening of the schedule of that train it was necessary to omit Winston and many other stations of similar importance from its schedule, and that the defendant cannot now stop train No. 12 at Winston without likewise stopping the same at other stations where there is more justification for the service, which would destroy the usefulness of the train in the interstate transportation of passengers; and alleging with respect to the service of such

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night agent that the defendant has not felt that its business justified the expense of maintaining such agent at Winston.

The case was regularly heard by Wm. G. Busby, special examiner for the Commission, at Kansas City, Missouri, on the 24th day of February, 1915, and has been submitted to the Commission for decision on the pleadings, evidence taken and report of the examiner. The statutory provisions governing the case are § 51 and subsection 2 of § 47 of the Public Service Commission law of 1913, and § 3275, Rev. Stat. (Mo.) 1909, which fully authorize the Commission to pass upon the questions involved.

[1] An examination of the record will disclose that the issues are whether such train and station services or facilities at Winston are inadequate, as claimed by the complainants, or whether the same are now adequate, and to grant the relief asked by the complainants, especially with reference to requiring defendant to stop one of its interstate passenger trains at Winston would be an improper interference with interstate commerce. If such local services or facilities provided by the defendant at Winston are inadequate, then it is within the power of this Commission to require adequate local facilities, and, if necessary to secure the same, to require the stoppage of interstate trains or the rearrangement of their schedules; whereas, if such local facilities are now adequate, then the obligation of the railroad company is performed, and an order requiring defendant to stop one of its interstate trains might be held an illegal interference with interstate commerce. Mississippi R. Commission v. Illinois C. R. Co. 203 U. S. 335, 51 L. ed. 209, 27 Sup. Ct. Rep. 90.

And as to what will constitute adequate and reasonable facilities, it has been held that "it is a relative expression, and has to be considered as calling for such facilities as might be fairly demanded, regard being had, among other things, to the size of the place, the extent of the demand for transportation, the cost of furnishing the additional accommodations asked for, and to all other facts which would have a bearing upon the question of convenience and cost." Alantic Coast Line R. Co. v. Wharton, 207 U. S. 335, 52 L. ed. 234, 28 Sup. Ct. Rep. 121.

[2] As stated, complainants' claims are that the passenger

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train service furnished by defendant to the citizens of Winston and community in traveling from Kansas City and St. Joseph and intermediate points to Winston, and the station service furnished at Winston, are unreasonable and inadequate, and we have decided and find in the light of the authorities and the record in the case that the complaint is well founded and that the complainants are entitled to relief.

We find the facts as follows: The railroad involved is known as the defendant's "Chicago, Kansas City, St. Joseph, Atchison, & Leavenworth Line," and is a trunk line of railroad between these points. The road crosses the northern boundary of Missouri at Lineville, and then runs west or southwest through northwest Missouri, over defendant's own line, to Altamont, and from Altamont to St. Joseph, and also from Altamont over another of its own lines through Winston and Cameron to Atchison and Leavenworth. The defendant operates its trains between Cameron and Kansas City over the road of the Burlington company. And the Burlington Company also operates a road from St. Joseph east to Cameron and thence on east through Missouri.

The town of Winston is located on defendant's road 65 miles northeast of Kansas City and about 45 miles east of St. Joseph, and is a thriving place of 300 to 350 inhabitants, with three general stores carrying from $15,000 to $20,000 worth of merchandise each; one good bank; two drug stores; one public garage; two restaurants; one harness, hardware and implement store; one newspaper; one poultry house; one creamery station; two feed stores and other business interests; and is located in a thickly settled, prosperous community devoted in a large measure to agriculture, stock raising, feeding and shipping. It is located on only one railroad, that of the defendant, and has no other railroad service at Winston.

While the evidence offered by the defendant tended to show a decrease to the extent of twenty carloads in the freight business and a decrease in the sum of $396.54 in receipts from outgoing passengers at Winston, in the year ending December 31, 1914, as compared with the year ending December 31, 1913, yet we do not think that this decrease was due to any falling off of the business or population of Winston and vicinity, but that the de-

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crease in the passenger receipts may be attributed in a measure at least to the lessening by defendant of its passenger train service at Winston on and after May 31, 1914; and yet after deducting these losses, the defendant's receipts, according to its own evidence, from its business at Winston for 1914 was the sum of $4,695 on freight forwarded; the sum of $9,029 on freight received; and the sum of $2,208 from outgoing passengers alone; making an aggregate of $15,932 for the year without including its receipts from incoming passengers, which it did not give in evidence.

For probably fifteen or sixteen years prior to 1914 the citizens of Winston and community were provided by defendant with two local passenger trains each way daily between Winston and Kansas City, whereby passengers might travel from Winston west to Kansas City or to St. Joseph or to Cameron, Lathrop, Liberty, and other intermediate points, attend to their business and return the same day; and we think that this fact, together with other persuasive facts shown by the evidence, establishes a reasonable necessity for such service or a similar service, at least at Winston, and the ability of the defendant to conveniently furnish it without seriously interfering with its interstate traffic, especially in view of the evidence which shows that the same necessity and demand exist now for such transportation facilities at Winston as had existed during the many years it was provided and prior to its discontinuance by defendant in May, 1914.

While the evidence discloses that the citizens of Winston have reasonably adequate train service in traveling west from Winston, in that they may take passage on a west bound local passenger train, No. 57, at Winston at 6:14 o'clock A. M., stop at Cameron, Kearney, or Liberty, or arrive at Kansas City at 8:30 o'clock A. M.; or if they desire, make reasonable connection at Cameron over the Burlington for St. Joseph; or they may take passage upon a west bound local passenger train, No. 25 at Winston at 4:51 o'clock P. M. and stop at intermediate points, or arrive at Kansas City at 7:45 o'clock P. M.; yet it further appears from the evidence that on November 16, 1913, the local eastbound passenger train No. 22, stopping at all stations between Kansas City and Winston, and regularly at Winston at 8.04

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o'clock in the evening, and making connection at Cameron with trains from St. Joseph and other stations west, was taken off by defendant, and its east bound passenger train No. 12, leaving Kansas City at 5:55 o'clock P. M., was thereupon regularly stopped at 7:58 o'clock P. M. at Winston instead of No. 22 until May 31, 1914, when in order to shorten its time schedule to Chicago, the defendant discontinued stopping No. 12 altogether at Winston excepting on flag to take on passengers for Chicago; since which time the complainants and other citizens of Winston and community have had no afternoon or evening train service from Kansas City and St. Joseph and intermediate points, excepting east bound passenger train No. 70, not carrying express, and leaving Kansas City at 2 o'clock P. M. (too early to afford passengers, and especially stock shippers arriving in Kansas City in the morning sufficient time to transact their business, get lunch, etc.), and not carrying any Winston passengers from St. Joseph, Cameron, or other points east of Kansas City, and stopping at Winston only to let off Kansas City passengers or on flag to take on passengers for Gallatin, Wabash Crossing, or Jamesport, stations east of Winston.

It is true that a local freight train numbered 82, which carries passengers, is scheduled, excepting on Sunday, to leave Winston at 10:40 o'clock A. M., arrive at Cameron Junction (its terminus) at 11:35 o'clock A. M., leave Cameron on its return trip at 12:45 P. M., and arrive at Winston at 1:35 o'clock P. M., but, as seen, this train operates only from Cameron east, and the evidence discloses that it is very irregular in its runs, and unsatisfactory, especially for lady passengers, in that they have to board the same at the stock yards at Cameron, etc.

On account of such inadequate service, the citizens of Winston and vicinity suffer many inconveniences. They cannot go to Kansas City or St. Joseph, or other points west of Winston, and have a reasonable time for their business and get back the same day, excepting possibly from Cameron on the freight train, which, as stated, is exceedingly inconvenient and unsatisfactory, and as a result are frequently required to stay all night and return on a local east bound passenger train, No. 30, leaving Kansas City at 8:15 o'clock and arriving at Winston at 10:40 o'clock the next morning.

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As long as east bound train No. 12 stopped at Altamont, about 4 miles east of Winston, many persons from Winston and community desiring to go to points west would drive to Altamont and leave their teams and return to Altamont on No. 12 at about 8 o'clock in the evening, and drive or walk back to Winston, but as the record of the Commission of which we make take notice now show that train No. 12 no longer stops at Altamont, even this inconvenient service is no longer available. And the evening mail, papers, and express from Kansas City and other points west would be taken through to Altamont, and not brought back to Winston until on train No. 57 the next morning, frequently too late to go out that day on the rural routes at Winston. And upon the discontinuance of the evening train service, the business men and citizens of Winston were deprived not only of the privileges of receiving their evening mail, papers, and express from the west, but also of a valuable privilege, which they had enjoyed for years, of shipping poultry, etc., by express in the cool of the evening to Chicago and points east, and had to abandon that business.

While the defendant offered in evidence for comparative purposes its train service and freight and passenger receipts at the stations of Spickard, Mercer, and Lineville east of Winston, and located much farther from Kansas City and St. Joseph, yet there is no evidence in the record showing that the service asked for by the complainants would be rendered at any considerable inconvenience or expense to the defendant, and we are satisfied that it may be rendered with very little inconvenience and expense.

The track at Winston is slightly down grade, and a train may be stopped and started in the shortest time usually consumed for such a stop, and train No. 12 is in fact now scheduled to stop at Winston on flag for passengers to Chicago; and the evidence discloses that since the filing of this complaint the defendant has employed a night agent or helper at $20 per month during cold weather, to be on duty at the station, and assist passengers coming in and departing on train No. 57 in the morning, and doubtless such an agent or helper may be employed continuously for about the same wages per month to be on duty and assist the passengers using train No. 57 in the morning and train No. 12 or No. 4 in the evening.

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Neither would the stopping of train No. 12 or No. 4 at Winston seriously interfere with its through schedule from Kansas City to Chicago, or with the defendant's interstate traffic. At the time of the hearing the evidence disclosed that the defendant had in operation over this line three passenger trains each way daily between Kansas City and Chicago, and two passenger trains each way daily between Kansas City and Allerton and Des Moines, Iowa, and that it was its intention to put on an additional train each way daily between Kansas City and Chicago, which our records show has been done, making six passenger trains now in operation each way daily.

[3] Mr. Brown, the only witness testifying for the defendant, admitted that the stopping of No. 12 at Winston would not in itself seriously interfere with its through schedule, but he and the defendant base their defense on the ground that if No. 12 is required to stop at Winston, then the defendant may be asked to stop it at other stations not now on its schedule. A sufficient answer to this defense is, we think, that this Commission has no disposition or power to improperly interfere with interstate commerce, and that in the language of the court in the case of State ex rel. Great Northern R. Co. v. Railroad Commission, 60 Wash. 218, 110 Pac. 1075, "it would be time enough to consider the effect of other stops when they should be ordered."

[4] The defendant's regular agent at Winston does not go to the station until 7 o'clock in the morning and leaves at 7 o'clock in the evening; and as the evidence shows that the defendant's patrons have suffered much inconvenience from its failure alone to have an agent at the station to serve its passengers using train No. 57, we think that the defendant should have an agent or employee on duty at the station, not only during cold weather, but throughout the year, in order to properly serve its patrons coming in and departing on train No. 57 in the morning and on train No. 12 or No. 4 in the evening.

A considerable number of passengers will leave and take passage upon these trains at Winston, and it is reasonably necessary that the defendant should have an agent in charge to sell tickets, weigh, check, and look after baggage, assist in putting baggage on and taking baggage off the trains, keep fires at the station during cold weather, light the lamps, give information,

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and otherwise properly attend to the comfort and convenience of the defendant's patrons.

While the complainants ask in their complaint that defendant be required to stop train No. 12 at Winston, we will give the defendant the option of stopping that train or its east bound passenger train No. 4, which, according to its schedule on file with this Commission, leaves Kansas City at 7:30 o'clock in the evening, and arrives at Winston at 9:30 o'clock in the evening; and we suggest that the defendant exercise its option of stopping train No. 4 instead of train No. 12, as it appears from our records that since the hearing of this cause the schedule of the defendant's trains over its lines from Atchison and Leavenworth, Kansas, to Cameron have been changed to connect with its train No. 4 instead of with train No. 12, as formerly at Cameron, and by stopping train No. 4 instead of train No. 12 at Winston, the defendant will serve a larger number of its patrons.

Our records also disclose that since the hearing of this case, Honorable H. U. Mudge and Honorable Jacob M. Dickinson have been appointed and are in charge of the defendant company as receivers under order of the Federal court, and this order will be served upon such receivers as well as the defendant company.

Note.—Railroad service and facilities.

The following cases relate to the establishment and maintenance of adequate railroad service and facilities:

Train service.

Arkansas.—In Re Memphis, D. & G. R. Co. Order No. A-83, June 4, 1915, company ordered to stop passenger trains at Amity and Roseboro.

California.—Curry v. Yosemite Valley R. Co. Decision No. 2306, Case No. 783, April 23, 1915, change in schedules authorized to establish a daylight service for passengers between San Francisco and Yosemite Valley.

Curry v. Yosemite Valley R. Co. Decision No. 2432, Case No. 783, May 29, 1915, modification of order of April 23, 1915, so as to provide that the defendant companies put into effect the through daylight service from San Francisco to Yosemite on Saturday of each week, and a through daylight service from Yosemite to San Francisco on Sunday of each week, this service to become effective

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May 29, 1915, and to continue until September 15, 1915, and to be in effect during the same season each year unless otherwise ordered by the Commission.

Colorado.—Johnstown Commercial Club v. Great Western R. Co. Informal Complaint No. 31, Formal Complaint No. 16, April 1, 1915, rearrangement of train schedule between Johnstown and Milliken ordered.

Public Utilities Commission v. Denver & Inter-Mountain R. Co. Case No. 19, I. C. No. 84, May 13, 1915, additional cars to relieve overcrowding ordered between Denver and Golden, and Denver and Barnum.

General Order No. 4, effective June 15, 1915, requiring the filing of copies of train schedules, notices of changes, and posting.

Connecticut.—In Re Fuller, No. 1502, April 14, 1915, stopping of New York, New Haven, & Hartford train No. 116, on signal at Abington, ordered.

The passenger service rendered to a town of 600 inhabitants by four trains in one direction and three in the other daily, together with the stopping of another train on Sunday, was held reasonable, it appearing that the regular stopping of other trains would detract more from the express service than would be compensated for by the improvement in the local service. In re William H. Hammond et al. No. 1501, April 14, 1915.

Illinois.—Railroad & Warehouse Commission ex rel. Schumacher v. Chicago & N. W. R. Co. No. 1171, July 8, 1915, order requiring the Chicago & Northwestern Railway Company to maintain passenger service from Seatonville to Churchhill, so scheduled so as to make reasonable connections with the passenger train both north and south on its Spring Valley line.

Burnham v. Kensington & E. R. Co. No. 3642, July 22, 1915, readjustment of train schedules denied.

Iowa.—Hall v. Chicago, R. I. & P. R. Co. Docket A-1645, Aug. 20, 1915, additional train service from Clinton to Bennett denied.

Louisiana.—Conrad v. Louisiana R. & Nav. Co. No. 2294, Feb. 23, 1915, petition for re-establishment of flag stop at Conrad denied.

Ex parte Louisiana & A. R. Co. No. 2298, March 23, 1915, discontinuance of certain trains between Jena and Packton and between Packton and Springhill authorized.

Trinity v. Louisiana & A. R. Co. No. 2341, March 25, 1915, restoration of passenger service between Jonesville and Wildsville Junction.

Ex parte Louisiana & A. R. Co. No. 2351, April 27, 1915, discontinuance of flag stop at Sardonia.

Ex parte New Orleans, T. & M. R. Co. No. 2350, April 27, 1915, discontinuance of Bear Station and establishment of station at Kernan ordered.

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Ex parte Louisiana & A. R. Co. No. 2298, April 27, 1915, double daily passenger service between Shreveport and Minden ordered continued.

Ex parte Louisiana & A. R. Co. No. 2298, April 27, 1915, authority to discontinue certain trains between Jena and Packton, and between Packton and Springhill.

Ex parte Texas & P. R. Co. No. 2302, April 28, 1915, readjustment of train schedule on main line and Port Allen branch denied; changes in passenger schedule on Natchitoches branch authorized.

Ex parte Louisiana & A. R. Co. No. 2298, March 23, 1915, continuance of double daily passenger service between Shreveport and Minden ordered.

Trinity v. Louisiana & A. R. Co. No. 2341, March 25, 1915, readjustment of schedule ordered.

Ex parte St. Louis, I. M. & S. R. Co. No. 2378, June 23, 1915, permission to discontinue carrying passengers on freight trains between Alexandria and Lake Charles.

Ex parte Texas & P. R. Co. No. 2388, June 23, 1915, permission to discontinue passenger trains between Addis and Ferriday.

Ex parte New Orleans G. N. R. Co. No. 2404, July 20, 1915, discontinuance of flag stop at Manske and establishment of stop at Bellamy instead, ordered.

Ex parte Arkansas, L. & G. R. Co. No. 2402, July 20, 1915, permission to discontinue Herington as a flag stop.

In Ex parte Texas & P. R. Co. No. 2304, April 28, 1915, the Louisiana Commission in refusing to authorize the discontinuance of a passenger train from Marksville to Eunice said, "The Commission cannot commit itself to the policy of requiring branch lines to earn a profit on the passenger service, for to do so would remove many of the most important passenger trains now serving thriving communities, and force the residents of these communities to the inconvenience and discomfort of traveling on mixed trains."

A railroad company was ordered to re-establish certain trains on a branch line previously discontinued, upon authorization by the Commission, where it appeared that serious hardships were being inflicted upon the people along such line through failure to receive mail promptly and the cessation of visitors to certain health resorts, that real estate and other values had shown great depreciation, and that demoralization existed in spite of the efforts of the people toward improvement. Abita Springs et al. v. New Orleans Great Northern Railroad Company, No. 2326, Order No. 1885, March 23, 1915.

A railroad company was not permitted to continue the nonoperation of trains on a branch line, on the ground that a curtailment of train service was necessary in order to prevent financial disaster, where it appeared that while a general financial loss was shown for the entire system, that loss was principally on that part of the road

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in another state and upon its main line, and that the branch line in and of itself had yielded revenues above expenditures before the service was discontinued. Ibid.

If any railroad service is to be discontinued, it should be that service which is operated at a loss, since the service which is paying should not be called upon to meet the deficits of that service which is operated at a loss. Ibid.

Michigan.—Benton Harbor v. Cleveland, C. C. & St. L. R. Co. D-877, April 4, 1915, application for continuance of certain trains denied.

In Re Pere Marquette R. Co. D-857, July 28, 1915, permission to discontinue service between Spencer and Stratford.

Minnesota.—In Re Butterfield, File A-1646, Aug. 25, 1915, Chicago, St. Paul, Minneapolis, & Omaha Railroad Company ordered to stop passenger trains stopping at Union depot in Butterfield at old depot formerly used in said village, and to provide for the selling of tickets, the checking and care of baggage, and a waiting room for passengers.

Missouri.—Dameron v. St. Louis & S. F. R. Co. No. 341, March 15, 1915, additional passenger trains between Senath and Kennett.

Montana.—Scobey Commercial Club v. Great Northern R. Co. No. 483, Aug. 26, 1915, passenger service daily except Sunday between Bainville and Scobey ordered.

Nashua v. Great Northern R. Co. No. 491, Aug. 27, 1915, certain trains ordered stopped at Nashua and Oswego.

Dodson v. Great Northern R. Co. No. 492, Aug. 27, 1915, train required to stop at Dodson.

Nebraska.—Sullivan v. Chicago, St. P. M. & O. R. Co. No. 238, June 16, 1915, complaint as to insufficiency of passenger and freight service of the Wynot branch dismissed.

New Hampshire.—Morey v. Maine C. R. Co. Sept. 10, 1915, restoration of passenger train service between Lancaster and Bartlett denied.

New Jersey.—Irvington Board of Trade v. Lehigh Valley R. Co. June 2, 1915, permission to discontinue three passenger trains on Irvington railroad, a branch line of respondent.

In Re Pennsylvania R. Co. July 27, 1915, petition for change in schedule for the operation of trains between Trenton and Long Branch denied.

Hall v. Erie R. Co. July 27, 1915, company authorized to make certain stops on the Greenwood Lake division, and to continue certain other trains and schedules without stops.

Safe, adequate, and proper service may be furnished by a railroad company although all of the cars on its excursion train are not provided with drinking water. In Re West Jersey & Seashore Railroad Company, New Jersey Board of Public Utility Commissioners, P.U.R.1915E.

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April 6, 1915. In this case the Board recommended that in running special excursions between specified points the company make up wherever practicable its trains, so that at least every third car of each train would have the usual car equipment for supplying drinking water, and that where it was impracticable to so make up the train, there be placed in one end of every third car a water cooler or like receptacle for holding water, and that this be filled with water, and such quantity of ice as would be necessary to keep during the trip the water of the temperature of that generally supplied in cars having the usual car facilities for drinking water.

North Carolina.—In Re Southern R. Co. April 27, 1915, discontinuance of certain trains between Raleigh and Goldsboro and between Salisbury and Hickory, authorized; permission to discontinue certain trains between Salisbury and Norwood, Mount Airy, and Sanfor, between Winston-Salem and Charlotte, and between Winston-Salem and North Wilkesboro, denied.

North Dakota.—In Re Minneapolis, St. P. & S. Ste. M. R. Co. No. 847, March 19, 1915, permission to substitute mixed train service between Bismarck and Wishek upon the maintenance of a certain speed.

Ohio.—Mase v. Baltimore & O. R. Co. No. 495, July, 1915, company required to stop certain passenger trains in East Youngstown.

Pennsylvania.—Hurst v. Erie R. Co. Docket No. 289, Feb. 17, 1915, establishment of additional passenger trains between Blossburg and Arnot, ordered.

Keefer v. Pennsylvania R. Co. No. 316, Feb. 17, 1915, signal device for stopping of trains at Woodside ordered.

Business Men's Asso. v. Philadelphia & R. R. Co. Docket No. 329, March 17, 1915, restoration of discontinued passenger trains from Glenside to New Hope refused.

Stevens v. New York C. R. Co. No. 371, July 8, 1915, restoration of passenger service at Gazzam refused.

Strayhorn v. Philadelphia & R. R. Co. No. 182, Aug. 13, 1915, morning and afternoon passenger train service ordered on the Middle Creek branch of respondent.

Philippine Islands.—Arias v. Philippine R. Co. No. 133, June 1, 1915, company required to provide adequate drinking water for its second and third-class cars, forbidden to permit overcrowding of cars, and ordered to take measures to eliminate thefts of lanterns used for lighting third-class cars.

South Dakota.—In Re Great Northern R. Co. F-204, May 22, 1915, permission to change running time of freight train between Watertown and Huron.

Commercial Club v. Chicago, M. & St. P. R. Co. F-172, June 26, 1915, re-establishment of a week day daily way freight service each way between Marion Junction and Springfield.

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In Re Chicago, M. & St. P. R. Co. F-210, June 29, 1915, company required to resume and continue to operate freight train service on all of its lines in the state daily except Sunday.

Wisconsin.—Cook v. Chicago, St. P. M. & O. R. Co. March 23, 1915, restoration of certain trains on Eau Claire and Spooner branch not required.

Boardman v. Minneapolis, St. P. & S. Ste. M. R. Co. May 1, 1915, stop at Eidsvold ordered discontinued.

Dobbins v. Minneapolis, St. P. & S. Ste. M. R. Co. June 3, 1915, refusal to require northbound passenger train No. 1 to stop at signal Fremont.

Canton Social Center v. Minneapolis, St. Paul & S. Ste. M. R. Co. June 15, 1915, order requiring company to provide a suitable passenger coach on each of its way-freight trains operated through Canton.

Strouf v. Chicago & N. W. R. Co. June 22, 1915, establishment of flag stop at crossing of respondent's line with town-line road between the towns of Gibson and Kossuth ordered.

Texas.—Circular No. 4758, April 10, 1915, General order requiring railroads to give Commission notice of purpose to discontinue passenger or mixed train.

Station facilities.

Arkansas.—In Re St. Louis, I. M. & S. R. Co. Order No. A-81, May 12, 1915, order to erect depot at McRae.

California.—In Re San Diego & S. E. R. Co. Decision No. 2298, Application No. 1555, April 19, 1915, permission to discontinue agency at Coronado.

In Re San Diego & S. E. R. Co. Decision No. 2299, Application 1571, April 19, 1915, permission to discontinue agency at Otay.

Modesto Chamber of Commerce v. Southern P. Co. Decision No. 2317, Case No. 557, April 21, 1915, change of site of new depot at Modesto ordered.

In Re Southern P. Co. Decision No. 2316, Application No. 1589, April 21, 1915, permission to discontinue agent at Traver.

Idaho.—In Re Idaho & W. N. R. Co. Case No. F-86, Order No. 234, June 10, 1915, permission to relocate depot at Twin Lake denied conditionally.

In Re Idaho & W. N. R. Co. Case No. F-86, Order No. 251, July 7, 1915, application for permission to change location of depot at Twin Lakes denied.

Illinois.—Marquis v. Chicago & M. Electric R. Co. No. 3408, March 31, 1915, construction of platform, Holdridge Crossing, ordered.

Felts v. Cleveland, C. C. & St. L. R. Co. No. 2658, May 20, 1915, improved passenger station facilities at Harrisburg ordered.

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Mt. Pulaski v. Illinois C. R. Co. No. 3054, June 3, 1915, erection of passenger and freight station at Mount Pulaski and suitable umbrella sheds ordered.

Civic League v. Chicago & A. R. Co. No. 3719, June 17, 1915, remodeling and enlargement of station building at Carrollton ordered.

In Re Chicago & E. I. R. Co. No. 4060, July 22, 1915, agreement between Chicago & Eastern Illinois Railroad Company for joint operation and maintenance of a passenger station at Clover.

Indiana.—Ex parte Southern R. Co. No. AR-436-Mc, March 5, 1915, approval of construction of new depot building at Eckerty.

Iowa.—Darrah v. Chicago, B. & Q. R. Co. Docket No. A-2074, Aug. 20, 1915, planking or paving of streets between the south platform and the north platform of station buildings at Chariton ordered and doors of cars in the west-bound trains directed to be so opened that passengers may be discharged and received on the south side of such trains.

Fuchs v. Chicago & N. W. R. Co. Docket No. A-1825, Aug. 31, 1915, petition for erection of passenger and freight depots and terminals in Cedar Rapids on the west side of Cedar river denied.

The Iowa Commission has no power to require railroads to provide and use a union station in a city, under § 2103 of the Code of 1897, empowering the Commission to require railroads to unite in establishing suitable platforms and station houses at points of connection or crossing, which section, when properly construed, applies solely to country crossings. Council Bluffs, Iowa and the Commercial Club of Council Bluffs, Iowa v. Chicago, Burlington & Quincy Railroad Company, et al., Docket A-1708, June 30, 1915.

In construing a statute relative to the maintenance of stations, the construction given a similar statute in a sister state is entitled to some weight. Ibid.

Kansas.—Garrison v. Union P. R. Co. No. 1031, Sept. 9, 1915, erection of depot and maintenance of agent at Garrison ordered.

Louisiana.—Ravenswood v. Texas & P. R. Co. No. 2299, Feb. 23, 1915, erection of pagoda and freight shed at Ravenswood ordered.

Morley v. Texas & P. R. Co. No. 2368, May 25, 1915, erection of freight and passenger stations at Morley ordered.

Maryland.—Parkton Improv. Asso. v. Pennsylvania R. Co. Case No. 952, July 8, 1915, establishment of agent at Parkton Station ordered.

Michigan.—Gregory v. Michigan Air Line R. Co. D-942, July 9, 1915, erection and maintenance of passenger station at Gregory ordered.

Minnesota.—In Re Northern P. R. Co. March 19, 1915, permission to withdraw station agent at Gloster.

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In Re Bock, File A-1681, May 22, 1915, Great Northern Railway Company ordered to erect station and depot at Bock.

In Re Goodhue, Aug. 6, 1915, erection of depot at Goodhue by Chicago Great Western Railway ordered.

In Re Minneapolis & R. L. & M. R. Co. Aug. 24, 1915, permission to erect at Bemidji a platform and warehouse 5 feet 10 inches from the center of the track.

In Re Burchard, Aug. 24, 1915, Chicago & Northwestern Railway Company, ordered to keep depot waiting room at Burchard warm and lighted one-half hour before and after the arrival and departure of all passenger trains stopping at that point.

Montana.—McCabe v. Great Northern R. Co. Docket No. 461, Jan. 28, 1915, agency at McCabe ordered.

Comanche v. Great Northern R. Co. Docket No. 475, April 28, 1915, establishment of agency at Comanche ordered.

Glengarry v. Chicago, M. & St. P. R. Co. No. 480, July 3, 1915, custodian to take charge of station building at Glengarry ordered.

Hesper v. Great Northern R. Co. Docket No. 482, July 26, 1915, portable station building and platform and maintenance of agent at Hesper ordered.

Suffolk v. Chicago, M. & St. P. R. Co. No. 481, Aug. 2, 1915, portable depot and maintenance of custodian at Suffolk ordered.

Whitefish v. Great Northern R. Co. Docket No. 489, Sept. 2, 1915, increased lighting facilities at depot at Whitefish ordered.

New Jersey.—Acquackanonk v. Erie R. Co. July 27, 1915, relocation of passenger station at Clifton denied; permission to company to abandon Clifton freight station denied, and certain improvements and facilities ordered.

In Scoble v. New York, S. & W. R. Co. April 13, 1915, the New Jersey Commission held that adequate means of approach to a box-car station at which tickets are sold, and which is not a mere interchange point, is not furnished by a railroad company, where no means of ingress and egress are provided, and passengers have to walk a quarter of a mile to the nearest highway over railroad tracks which are on top of a high embankment most of the way, and across a trestle over a ravine part of the way.

The choice of the actual site from a railroad station is properly a function of the management of the railroad company, and should not be interfered with unless it is established that the requirements for adequate service or the safety of the public are disregarded. Ibid.

A railroad company which has relocated a passenger station at the nearest accessible highway will not be compelled to maintain the station at its former location, where in order to do so it will be necessary to purchase a private right of way thereto; and the fact that the grade and condition of the highway are bad, and require a passenger to travel a considerably greater distance than would be

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required if the path were built to the old station, is immaterial, since the condition of the highway is not the fault of the company, but of the municipality. Ibid.

North Carolina.—Kingston v. Atlantic Coast Line R. Co. April 14, 1915, erection of union station at Kingston ordered.

Ansonville v. Winston-Salem Southbound R. Co. June 9, 1915, petition for removal of depot at Ansonville denied.

North Dakota.—In Re Hartland Station, No. 563, April 19, 1915, reopening of Hartland station ordered.

In Re Fairmount, No. 693, March 19, 1915, Chicago, Milwaukee & St. Paul Railway ordered to relocate and remodel depot at Fairmount.

Ohio.—Mase v. Baltimore & O. R. Co. No. 495, July 1, 1915, company required to maintain adequate depots in East Youngstown.

Oklahoma.—Finley v. St. Louis & S. F. R. Co. No. 2034, Feb. 8, 1915, refusal to order building of depot and maintenance of agent at Hamden.

Levick v. Atchison, T. & S. F. R. Co. Citation No. 490, Feb. 27, 1915, improvements in approaches to station at Ralston ordered.

Boring-Kim Produce Co. v. Kansas City, M. & Orient R. Co. No. 2053, June 1, 1915, erection of freight depot to serve town of Clinton ordered.

Wellston v. St. Louis & S. F. R. Co. Cause No. 2335, Aug. 6, 1915, improved station facilities at Wellston ordered.

Oregon.—Gilkey v. Southern P. Co. File No. F-393, March 24, 1915, erection of maintenance of standard shelter shed at Gilkey station ordered.

Ash Swale Grange v. Southern P. Co. F-398, July 8, 1915, erection of standard shelter shed at Linn Station ordered.

Pennsylvania.—Keefer v. Pennsylvania R. Co. No. 316, Feb. 17, 1915, stove in waiting room in station at Woodside ordered.

State Hospital v. Eastern Pennsylvania R. Co. Docket No. 360, April 20, 1915, erection of shelter station at borough of Coaldale ordered.

Davis v. Northern C. R. Co. Docket No. 305, May 7, 1915, petition for passenger station at New Market denied.

Long v. Philadelphia & R. R. Co. No. 382, July 22, 1915, refusal to order removal of exit gates at Wayne Junction.

South Dakota.—Barker v. Chicago, M. & St. P. R. Co. F-140, April 28, 1915, company ordered to maintain railroad telephone facilities at Loomis, and between Loomis and Mitchell, in good and efficient condition.

Klatt v. Chicago, M. & St. P. R. Co. F-179, June 2, 1915, improved station facilities at Tripp ordered.

Bunnell & Son v. Chicago, M. & St. P. R. Co. F-185, June 26, 1915, installation of telephone in depot at Vivian ordered.

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Peterson v. Chicago, M. & St. P. R. Co. F-156, June 29, 1915, establishment of agent and remodeling and relocation of station at Firesteel ordered.

Barnard v. Chicago & N. W. R. Co. F-184, Aug. 7, 1915, erection of station between stations 9779 and 9780 or between stations 79 and 80, the construction of a station platform, and the installation of a station agent ordered.

A railroad company was permitted to retire from service a station agent at a designated point where the revenues had become greatly reduced by abandonment of certain logging and tie business, on condition, however, that section foreman and his wife, with proper telephone service, give attention to reasonable needs of public as specified in order. In Re Chicago, Burlington & Quincy Railroad Company, No. F-167, Feb. 16, 1915.

Texas.—An agreement of a railroad company, made in consideration of a conveyance of land to it, to maintain a depot on the land, is valid so that it can be specifically enforced by enjoining the company from removing the depot, provided the interests of the public do not demand the removal. Mosel v. San Antonio & A. P. Railway Company, 177 S. W. 1048, May 26, 1915.

An agreement of a railroad company to maintain a depot on land conveyed to it is not satisfied by the maintenance of a freight depot only, where the contract was made in contemplation of a custom in small towns to locate freight and passenger depots on the same grounds near each other. Ibid.

The Texas Railroad Commission has no power to compel the specific performance of a contract for the maintenance of a depot at a particular place. Ibid.

The power of the Texas Railroad Commission to see that all the laws relating to railroads are enforced, does not militate against the right of the courts to entertain an action for the specific performance of a contract to maintain a depot at a particular place. Ibid.

On a hearing for a temporary injunction to compel the specific performance of a contract to maintain a depot at a particular place by restraining the railroad from removing it, a judge, sitting in chambers, has no power to sustain a general demurrer to the petition upon the ground that such a contract cannot be specifically enforced. Ibid.

Wisconsin.—Monk v. Chicago, St. P. M. & O. R. Co. Jan. 28, 1915, erection of umbrella shed at Merrillan.

Felker v. Chicago & N. W. R. Co. March 19, 1915, petition for additional passenger station at Marshfield dismissed.

Gierke v. Chicago & N. W. R. Co. March 20, 1915, petition for station agent at Brookside dismissed.

Griep v. Chicago & N. W. R. Co. May 24, 1915, erection of mod-

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ern station building at North Freedom adequate for freight and passenger traffic ordered.

Westrom v. Minneapolis, St. P. & S. Ste. M. R. Co. June 14, 1915, adequate passenger station building at Dwight ordered.

Thompson v. Chicago, St. P. M. & O. R. Co. June 24, 1915, improved station facilities at Wascott and establishment of agency ordered.

Howard v. Chicago, St. P. M. & O. R. Co. June 25, 1915, enlargement of joint depot at Cameron ordered.

Ziesenis v. Minneapolis, St. P. & S. Ste. M. R. Co. July 24, 1915, adequate freight and passenger station building at Lehigh and employment of competent care taker ordered.

Auburndale v. Minneapolis, St. P. & S. Ste. M. R. Co. July 30, 1915, erection of adequate freight and passenger building at Auburndale ordered.

Sussens v. Minneapolis, St. P. & S. Ste. M. R. Co. July 27, 1915, application for agent and telegraph operator at Patzau denied.

Stock-yard facilities.

Arkansas.—In Re St. Louis Southwestern R. Co. Order No. A-63, March 4, 1915, installation of stock pens at Brookland ordered.

Illinois.—In Ashton v. Illinois C. R. Co. No. 3162, April 8, 1915, the Illinois Commission held that track or stock scales cannot be considered in general a part of a railroad's necessary facilities or equipment for the transaction of ordinary business, and that a provision of the statute giving the Commission power to make "reasonable regulations for the weight of cars and of freight for shipment" cannot be construed to justify an order requiring the railroad to install track or stock scales for the convenience of live stock.

Iowa.—Robertson v. Minneapolis & St. L. R. Co. Case A-1669, March 31, 1915, removal of stock yard outside of town of Taintor ordered.

Minnesota.—In Re use of Stock Yard, June 24, 1915, the Minnesota Commission found that a reasonable time for allowing stock to remain in yards before shipment to be forty-eight hours between April 1, and November 1, and seventy-two hours between November 1 and April 1, and ordered that such regulation be adopted by the railroad companies of the state.

In Re Great Northern R. Co. July 31, 1915, erection of two-pen stockyard with sufficient loading chute at Elizabeth ordered.

Montana.—Thompson v. Great Northern R. Co. Docket No. 453, Aug. 7, 1915, petition for construction of stock yards at Box Elder, dismissed; previous order requiring construction of stock yards at Assinniboine continued.

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New Mexico.—New Mexico Wool Growers' Asso. v. Atchison, T. & S. F. R. Co. — N. M. —, 145 Pac. 1077, stock scales held not to be a necessary facility for receiving and delivering freight.

North Dakota.—In Re Stock Yard at Portland, No. 876, April 16, 1915, Great Northern Railroad Company ordered to construct stock yard at Portland.

In Re Stock Yard at Paneta, No. 793, April 16, 1915, railroad ordered to improve stock yard at Paneta.

In Re Stock Yard at Powers Lake, No. 776, April 19, 1915, Great Northern Railway Company ordered to provide a one-pen stock yard with standard loading chute and feed racks at Powers Lake.

In Re Stock Yard at Palermo, No. 691, April 19, 1915, erection of stock yards at Palermo ordered.

In Re Stock Yard at Colfax, No. 462, April 19, 1915, Great Northern Railroad Company ordered to provide one-pen stock yard with standard loading chute, water, feed racks, and shed at Colfax.

In Re Stock Yard at Blabon, No. 735, April 19, 1915, railroad ordered to provide two-pen stock yard with standard loading chute, water, feed racks, and shed at Blabon.

In Re Stock Yard at Wildrose, No. 785, April 19, 1915, railroad ordered to provide two-pen stock yard with standard loading chute, water, feed racks, and shed at Wildrose.

In Re Stock Yard at Deering, No. 867, April 19, 1915, railroad required to provide a one-pen stock yard with standard loading chute and shed at Deering.

In Re Stock Yard at Kindred No. 882, April 19, 1915, Great Northern Railroad Company ordered to provide two-pen stock yard with standard loading chute, water, feed racks, and shed at Kindred.

South Dakota.—In Re Stock Yards, F-177, Feb. 11, 1915, increased facilities at Pierre ordered.

Barker v. Chicago, M. & St. P. R. Co. F-140, April 28, 1915, additional stock yard facilities at Loomis ordered.

Wisconsin.—Meier v. Chicago, St. P. M. & O. R. Co. May 26, 1915, petition for additional facilities for loading live stock at Elmwood denied.

In Farmers Co-op. Packing Co. v. Chicago, B. & Q. R. Co. July 1, 1915, the Wisconsin Commission ordered a railroad company to improve its stock-shipping facilities, increasing the width of the driveway where shippers were obliged to turn their wagons, and by providing a portable chute, and by constructing an additional pen, it appearing that the pens maintained were not sufficient to care for all the stock which were occasionally brought for shipment. In this case it was held that the Commission has no power to compel a railroad company to maintain scales for weighing stock at stock pens.

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Branch or side tracks.

Arkansas.—In Re St. Louis & S. F. R. Co. Order No. A-80, May 11, 1915, permission to construct spur track at Hatchie Coon.

California.—In Re Visalia Electric R. Co. Decision No. 2422, Application No. 1626, May 26, 1915, permission to remove spur track serving packing house denied temporarily.

Connecticut.—In Re Connecticut Co. Docket No. 1518, April 12, 1915, construction of temporary spur track.

In Re Bridgeport, Docket No. 1526, May 22, 1915, approval of construction and maintenance of commercial side track upon Barnum avenue in Bridgeport.

Idaho.—In Re Pacific & I. Northern R. Co. Case No. 101, Order No. 230, May 28, 1915, permission to remove spur track near New Meadows.

Peterson v. Camas Prairie R. Co. Case No. F-77, Order No. 240, June 21, 1915, petition for construction of spur track to mill of petitioner denied.

Illinois.—In Re Cleveland, C. C. & St. L. R. Co. No. E-191, April 22, 1915, approval of side-track extension agreement.

In Re Chicago River & I. R. Co. No. 3338, March 4, 1915, approval of trackage agreement.

In Re Cleveland, C. C. & St. L. R. Co. No. 3517, March 4, 1915, approval of side-track agreement.

In Re Indiana Harbor Belt R. Co. No. 3337, March 4, 1915, approval of trackage agreement.

In Re St. Louis, S. & P. R. Co. No. 3566, March 31, 1915, approval of switch-track agreement.

In Re Cleveland, C. C. & St. L. R. Co. E-208, May 20, 1915, approval of side-track agreement.

In Re Cleveland, C. C. & St. L. R. Co. No. E-206, May 20, 1915, approval of side-track agreement.

In Re Cleveland, C. C. & St. L. R. Co. E-216, June 3, 1915, approval of side-track agreement.

In Re Cleveland, C. C. & St. L. R. Co. E-222, June 17, 1915, approval of agreement between railways relating to the use of side tracks.

In Re Cleveland, C. C. & St. L. R. Co. E-219, June 17, 1915, approval of side-track agreement.

In Re Cleveland, C. C. & St. L. R. Co. E-252, July 8, 1915, approval of side-track agreement.

In Re Cleveland, C. C. & St. L. R. Co. E-286, Sept. 2, 1915, approval of agreement relating to construction and use of temporary side track.

In Re Mobile & O. R. Co. E-271, Sept. 2, 1915, approval of spur-track agreement.

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In Re Cleveland, C. C. & St. L. R. Co. No. E-285, Sept. 2, 1915, approval of side-track agreement.

Iowa.—Fuchs v. Chicago & N. W. R. Co. Docket A-1825, Aug. 31, 1915, erection of team track at Cedar Rapids ordered.

Louisiana.—Ex parte Louisiana & A. R. Co. No. 2351, April 27, 1915, removal of spur track at Sardonia.

Maine.—In Re Grand Trunk R. Co. May 4, 1915, permission to construct and maintain branch railroad track in Portland.

In Re Portland Terminal Co. R. R. 26, location of branch track in Portland.

New Jersey.—In Re Andover Gardens Co. July 12, 1915, refusal to require railroad company to maintain and operate switch connection with private side track on complainant's property.

North Dakota.—In Re Hartland Station, No. 563, April 19, 1915, extension of spur track ordered.

In Re Great Northern R. Co. No. 831, April 19, 1915, construction of siding between Granville and Deering ordered.

In Re Great Northern R. Co. No. 276, April 19, 1915, construction of siding between Deering and Glenburn.

South Dakota.—In Nedved v. Chicago, M. & St. P. R. Co. — S. D. —, 153 N. W. 886 (1915) it was held that the distance between stations in a statute (S. D. Civil Code § 534) requiring railroad companies to construct and maintain side tracks between stations that are now more than 12 miles apart when ordered by the Railroad Commission to do so, means the distance apart along the line of the railroad track upon which such stations are situated, and not the distance apart in a direct line across the country.

While the Railroad Commissioners have no authority arbitrarily to require a railroad company to construct a side track under a statute authorizing them to require railroads to construct and maintain side tracks for shippers between stations that are more than 12 miles apart, a finding by the Commissioner that a side track was public necessity will not be overruled by the court where it is supported by evidence. Ibid.

A junction point, without a side track, on a line of a railroad, is not a station within the provisions of a statute requiring railroad companies to construct and maintain side tracks for shippers between stations that are more than 12 miles apart, when ordered to do so by the Railroad Commissioners, so as to deprive the Commissioners of jurisdiction to order a side track. Ibid.

Abandonment of railroad.

California.—In Re Monterey & D. M. Heights R. Co. Application No. 1528, Decision No. 2278, April 7, 1915, the California Commission authorized a railroad company to abandon the operation

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of a line of railroad 2.86 miles in length, it appearing that its operation was not warranted by its patronage, present or prospective.

Refusal of permission for the abandonment of a line of railway between certain towns, on the theory that it would seriously affect the plant investment of certain quarries, was held unjustified where it appeared that the revenues derived from shipment from this source had been small for a considerable period prior to the application, where the monthly deficit from the operation of the railroad had been relatively large, and where there were no prospects of additional tonnage from the district served. In re Colusa & Lake Railroad Co. Decision No. 2324, Application No. 1550, April 23, 1915.

In Re San Bernardino & R. R. Co. Decision No. 2991, Application No. 1527, May 14, 1915, permission to abandon narrow gauge railroad running between San Bernardino and Redlands.

Minnesota.—In Re Minneapolis & R. River R. Co. A-1684, Aug. 18, 1915, the Minnesota Commission withheld present consent to the abandonment of a branch line of a railroad where the company conceded that the line should continue to operate for a limited period, but they held that leave would be granted to renew the application at the end of the period. The company was permitted to abandon a branch line 4.58 miles in length where there was only apparent use for about a mile and a half of the track for one season, and the expense of putting it in repair would exceed the probable revenue. It was also permitted to abandon a branch line which was built for temporary use, where a sink hole of unknown depth in its right of way made it difficult to estimate the cost of a permanent track, and where even temporary repairs would be large. It was also held, however, that a railroad company would not be permitted to abandon a branch road running into a growing and productive territory, settled by homesteaders in reliance upon the permanence of a railroad, and from which there is lumber awaiting shipment, even though the entire revenue would be required to keep it in condition to operate. It was also held that a railroad company building a branch line for temporary purposes should post notices along its right of way to that effect, in order that settlers might not be deceived.

Physical connection and joint service.

California.—In Re Petaluma & S. R. R. Co. Decision No. 2491, Case No. 386, June 17, 1915, petition for physical connection between Petaluma and Santa Rosa Railway Company and the North Western Railroad Company at Petaluma, Sebastopol, or Santa Rosa, dismissed.

Kansas.—The Commission has no jurisdiction to compel joint service between two railroads for the purpose of affording shipping facilities for merchandise from points within the state to points outside the state, since such shipments must necessarily be interstate in

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their character. The Galena Commercial Club v. St. Louis & San Francisco Railroad Company et al. Docket No. 858, January 12, 1915.

A railroad company having rights of trackage for through trains between certain points on the line of another railroad company, under a contract which expressly forbids its participating in local business between those points, cannot be compelled to serve the local stations on such line, especially where local service rendered by the proprietary company is reasonable and satisfactory, and is being performed as completely as it was before the contract was made. Ibid.

A contract which grants to one railroad company trackage rights for through trains between certain points on the line of another railroad company, and prohibits the grantee's participating in local business between those points, will not be sustained in the former particular, and be held void with respect to the prohibitory clause, on the ground that it discriminates against the local stations. Ibid.

A clause contained in a trackage-rights agreement between two railroad companies, which provides for additional compensation to be paid the proprietary company in case the grantee should be lawfully required to render service to local stations on the lines over which the rights are granted does not empower the Commission to compel the grantee company to render such local service where the grant is limited to trackage rights for through trains, and expressly prohibits the rendering of intermediate service. Ibid.

The contention that the operating of trains of one railroad company over the tracks of another railroad company under a trackage-rights agreement imposes an additional servitude entitling the public and cities on the line of the road to the service of such additional trains involves a judicial question, which cannot be determined by the Commission. Ibid.

Wisconsin.—Waukesha Lime & Stone Co. v. Chicago, M. & St. P. R. Co. June 14, 1915, physical connection between tracks of Chicago, Milwaukee, & St. Paul Railway Company and the Chicago & Northwestern Railway Company in Waukesha ordered.

Safety.

California.—In Re Yosemite Valley R. Co. Decision No. 2162, Case No. 632, February 23, 1915, order to issue new time card with speed restrictions.

Illinois.—Coughanour v. South Side Elev. R. Co. No. 3010, May 20, 1915, remedy of unsafe conditions connected with certain trap doors in the cars ordered.

Indiana.—In Re Lake Erie & W. R. Co. No. 1527, May 14, 1915, permission to make safe efficiency tests.

A railroad company was granted an extension of time in which to install automatic block signals previously ordered by the Commis-

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sion; it appearing its present manual block signal system was highly efficient, that no accident had occurred on account thereof, that the railroad had had to spend large sums for damages caused by flood and to meet equipment requirements of recent legislation, and that it had sustained heavy reductions in operating revenue during the year on account of the falling off of business generally. In re Pittsburgh, Cincinnati, Chicago and St. Louis Railroad Company, No. 350, March 5, 1915.

Maine.—In Re Van Buren Bridge Co. May 1, 1915, Certificate of Safety; In Re Bangor & A. R. Co. May 1, 1915, Certificate of Safety.

Michigan.—In Re Michigan C. R. Co. X-1575, Jan. 26, 1915, approval of railroad signal department plans D-268, revised Jan. 5, 1915.

Oklahoma.—In Re Order No. 109, Cause No. 1585, Feb. 10, 1915, all steam and electric railroad companies in the state ordered to block with standard safety devices, permanently fastened, all frogs, crossing frogs, and guard rails in connection with frogs and switches, on main-line track or tracks and at such switch track or tracks as connect with main line, together with all other frogs and guard rails in use in the state that connect with switch track or tracks.

Philippine Islands.—In Re Manila R. Co. Case No. 176, April 6, 1915, air brakes and safety chains on freight rolling stock ordered.

Miscellaneous.

Illinois.—Miller v. Chicago & A. R. Co. No. 2793, June 17, 1915, refusal to modify heater-service rules.

Commercial Club v. Chicago, M. & St. P. R. Co. F-172, June 26, 1915, Commercial Club of a city held as a proper party complainant in a proceeding to establish an adequate railroad service.

Louisiana.—Trinity v. Louisiana & A. R. Co. No. 2341, March 25, 1915, repair of tracks ordered.

Nebraska.—In Re Nebraska Steam Road, Application No. 2223, June 18, 1915, permission to cancel rules applicable to Nebraska state traffic authorizing the stopping of cars of horses, mules, and asses in transit for the purpose of partially unloading or to complete loading.

Philippine Islands.—Ramos v. Manila R. Co. Case No. 175, June 22, 1915, company ordered to discontinue practice of delivering freight destined for points beyond the San Fernando-Dao grade out of order of its receipt in Manila.

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NEW HAMPSHIRE PUBLIC SERVICE COMMISSION.

IN RE CONWAY ELECTRIC LIGHT & POWER COMPANY.

[D-245.]

Security issues — Book cost and reproduction cost.

1. Securities may be issued to cover the actual cost of pole-line construction and meters, although a valuation shows a present cost of reproduction new somewhat less than the actual cost.

Security issues — Undeveloped water power — Effect for rate-making purposes.

2. An issuance of securities may be authorized to retire securities issued without the consent of the Commission in payment for undeveloped water power, but this will not be regarded as establishing the value of the water power for rate-making purposes.

Security issues — Illegal issues — Powers of Commission.

3. The New Hampshire Commission, while without power to legalize an illegal issue of stock, may authorize an issue for the purpose of retiring outstanding stock illegally issued.

[September 1, 1915.]

PETITION for authority to issue stock of the par value of $29,200 for the purpose of taking up share for share a like amount of stock inadvertently issued without lawful authority; granted.

Appearances: Walter D. H. Hill for the petitioner.

By the Commission: The petitioner was chartered by special act of the legislature in 1909, but for several years took no steps toward engaging in business, except that in that year it purchased the undeveloped Odell's Falls water power. In 1913 a change in ownership was effected, and the water power was transferred to one of the stockholders, who in turn reconveyed it to the company, at an advance in price. The company then proceeded to erect transmission lines, taking its power from a Maine corporation, and issued stock to the amount of $25,200, and has since been engaged in the business of supplying electricity in the town of Conway. All this was done without any authorization by this Commission, and in ignorance of the requirements of the Public Service act.

By another petition the company has now sought authority for its engaging in business in the town of Conway. By this petition it seeks the legalizing of its outstanding stock issue.

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[1] The largest item of capitalizable expenditure is that of pole-line construction and meters. A valuation made by our electrical engineer shows a present cost of reproduction new somewhat less than the actual cost as shown by the company's books. But the construction was carried on under unfavorable circumstances, which considerably increased the expenses; and we find that the company's accounts in this particular correctly state the amount actually expended, and that this amount is properly capitalizable.

[2] The other large item is the price paid for the undeveloped water power. This transaction was certainly irregular. But the company's officers believe that the power is worth all that was paid for it. And the report upon its possibilities of development made by a competent hydraulic engineer furnishes some justification for this belief. On the other hand, there is little demand for power in that neighborhood, and it is doubtful whether the power will in fact ever be developed.

As long as it is unused, of course, its value is not a factor in the determination of reasonable rates. Its purchase was made in good faith, though irregularly, and stock was issued in good faith to pay for it. Under the circumstances, it does not seem incumbent upon us to be over critical, so far as the question involved in this case is concerned. If its value should ever be material in a rate inquiry, the whole transaction would, of course, be subject to the closest scrutiny. Our allowance of this item as a basis for capitalization under the peculiar circumstances of this case is not to be regarded as establishing or evidentiary of the value of the water power for purposes of rate making.

In addition to these two items, there are other expenditures properly capitalizable, sufficient to support the outstanding stock issue, without taking into account the item of $1,400 claimed as organization expenses. There is no clear evidence as to the nature of these latter expenditures, and such evidence as there is renders extremely doubtful their propriety as a charge against capital account. If the company desires a further issue of stock on account of this item, or to pay its floating indebtedness, a considerable part of which was confessedly contracted to defray operating expenses, accounts must be submitted in much clearer and more detailed form than anything which has yet been furnished.

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[3] As we stated in the similar case of Re Canterbury & B. Teleph. Co. 4 N. H. P. S. C. R. 312, we know of no provision of law under which we can legalize an illegal issue of stock.

The stockholders having voted that the stock be issued by the directors without being offered to the stockholders proportionately, we can, however, as in the former case, authorize its issue for the purpose of retiring the outstanding stock illegally issued. An *order* will issue accordingly.

Edward C. Niles, for the Commission.

PENNSYLVANIA PUBLIC SERVICE COMMISSION.

BLAIRSVILLE TELEPHONE COMPANY

v.

JOHNSTOWN TELEPHONE COMPANY et al.

[Complaint Docket No. 373.]

Service — Telephone — Physical connection — Construction of statute.

1. In order to enable the Pennsylvania Commission to act under the provisions of the Public Service Company law with reference to physical connection between the lines of telephone companies, it must be established: (1) That neither one of the companies has lines or facilities for connections which communicate with or reach both of the localities; and (2) that the two companies have lines which either form, or can be connected so as to form, a continuous line between the two localities; and that if there is already communication by direct single line or joint continuous line of company or companies, there should appear from the evidence that public necessity existed for the linking of the two new companies whose lines are continuous when joined together, and neither of which reaches both localities by its own line or its facilities or connections.

Service — Telephones — Physical connection — Definition of term "localities."

2. The definition of the term "localities" as used in the Public Service Company law with reference to physical connection between the lines of telephone companies must be determined by the particular circumstances of each case.

Service — Telephones — Physical connection — Locality directly served.

3. The Pennsylvania Commission refused to order physical connection between the lines of two telephone companies to the exchange of a third company, where it appeared that the objecting company had connection with the locality served by the complainant through the lines

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of a fourth company, and there was no evidence that the latter connection could not afford adequate service to the locality served by the complainant, and the only evidence that public necessity for the new connection existed was a petition asking therefor by a number of subscribers of complainants, and the fact that such connection would be more convenient.

Discrimination — Telephones — Physical connection.

4. The mere fact that a telephone company which refuses to afford physical connection between its lines and the lines of another company, through the exchange of a third company, grants such facilities to a fourth company, does not show that the latter company is given any undue preference thereby, in the absence of evidence that the companies are similarly situated with respect to such service.

[July 22, 1915.]

PROCEEDING brought by complainant to compel physical connection between its lines and the lines of the Windber Telephone Company through the exchange of the Johnstown Telephone Company; denied on the ground that no public necessity existed therefor, complainant's locality being adequately served by connection between the lines of the respondent, the Windber Telephone Company with the lines of the Bell Telephone Company operating in the locality.

Appearances: G. E. Crist, General Manager, Blairsville Telephone Company.

Monaghan, Commissioner: The Blairsville Telephone Company, on March 17, 1915, filed its complaint against the Johnstown Telephone Company and the Windber Telephone Company, setting forth that the complainant is a public service corporation, operating a telephone line in the counties of Indiana and Westmoreland, and having its principal office at Blairsville, Pennsylvania; that

The Windber Telephone Company, one of the respondents, is also a public service corporation, engaged in the business of operating a telephone line in the county of Somerset, with its principal office at Windber, in that county; and that the Johnstown Telephone Company, the other respondent, is also a public service corporation, operating a telephone line in the county of Cambria, with its principal office at Johnstown, Pennsylvania.

It is alleged that the complainant, the Blairsville Telephone Company, is connected with the Johnstown Telephone Company,

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that the latter company has connection with the Windber Telephone Company, and that without any change of lines it is possible to make complete connections between the subscribers of the Blairsville Telephone Company and the Windber Telephone Company through the Johnstown Telephone Company. The complainant states that the respondent companies have refused to permit such connections when requested so to do, and that the complainant company has no other means of communication by which it can serve a large number of its subscribers than the lines of the respondent companies.

The complainant further alleges that the lines of neither the company complainant nor the respondents' lines form a continuous connection between the different localities specified, and claims such right of connection under paragraph 6 of § 1 of article 2 of the Public Service Company law.

The Johnstown Telephone Company in its answer prays that the petition be granted, and states that it is willing to grant the connection asked for, but that it has made an agreement with the Windber Telephone Company by which it is precluded from exchanging traffic with the complainant or to any other points east, west, and north on the lines of the Johnstown Telephone Company.

In an informal answer the Windber Telephone Company denies that it has refused the connection asked for, and sets forth that it has connection with the Blairsville district through the Bell Telephone Company's lines, but that the traffic produced is of such small volume as to be almost negligible.

At the hearing held in this matter the general manager of the complainant company was the only witness, and from the testimony produced it appears that the Blairsville Telephone Company operates lines supplying 600 to 700 subscribers, 90 per cent of whom are not subscribers to the Bell Telephone Company, in Indiana and Westmoreland counties, with its principal office at Blairsville, Indiana county, and that it has interchange of service with the Johnstown Telephone Company, operating in Indiana and Somerset counties, and this company, in turn, has direct connection and interchange of service with the Windber Telephone Company.

The Somerset Telephone Company operates in Somerset and

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Cambria counties, and connects with the Johnstown Telephone Company and through it with the Windber Telephone Company.

The Windber Telephone Company connects with the Bell Telephone Company, with which company it operates a joint exchange at Windber, and by this connection reaches Blairsville and its vicinity where the Bell Company has about 175 subscribers.

The testimony discloses that the connection asked for could be made without any change of lines or any additional expense of any description, as the Blairsville Telephone Company now connects with the Johnstown Telephone Company and that company connects with the Windber Telephone Company, but this connection the Windber Telephone Company refuses to permit for the reason that it is already furnishing service to Blairsville through its connection with the Bell Telephone Company.

The complainant presented a petition signed by a large number of the subscribers of the Blairsville Telephone Company, requesting that this Commission order connection for interchange of service between the Blairsville Telephone Company and the Windber Telephone Company through the lines of the Johnstown Telephone Company, and that such an exchange of service would greatly aid the subscribers at Blairsville in their homes and their business.

Article 2, § 1, paragraph (V), of the act of July 26, 1913, provides that it shall be the duty of every public service company "if a telephone corporation, or person engaged in the telephone business, whose lines, together with the lines of another telephone corporation, or person engaged in the telephone business, form a continuous line of communication between different localities, which are not reached by lines, facilities, or connections of either alone, and could be made to do so by the construction and maintenance of suitable connections between the several lines at common points, for the transmission of conversations between different localities, to jointly arrange for the interchange and transfer of conversations at such common points when it can reasonably be done, and efficient service can be obtained without injustice to either company and without substantial impairment or detriment to the service to be rendered by either company, and when necessity exists therefor, in order to supply through

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traffic communications between different localities not otherwise provided for by the companies in question, or either of them; and shall operate and conduct a joint through traffic over the several lines so connected, and shall make the proper rules and regulations governing the same, and shall establish just and reasonable rates and charges for the joint through service thereby rendered, and shall make among themselves an equitable apportionment of the costs and revenues appertaining to the joint facilities and service." [Laws 1913, p. 1385.]

And under article 5, § 9 of the said act, prescribing the powers and duties of this Commission, it is provided:

"Whenever the Commission shall find that there are any two or more telephone companies whose lines form a continuous line of communication, or could be made to do so by the construction and maintenance of suitable connections between the several lines at common points, for the transmission of conversations between different localities which are not reached by the lines of either company alone, and that such connections and facilities for the through transmission of conversations, jointly, over the several lines, can reasonably be made, and an efficient service can be obtained without injustice to either company, and without substantial impairment or detriment to the service to be rendered by either company, and that a public necessity exists therefor; or shall find that any two or more telephone companies have failed to establish just and reasonable joint rates or charges for through service, by or over their several lines so connected, and that such joint rates or charges ought to be established, in order to supply a through traffic and communication between different localities not otherwise provided for, or proffered by the companies in question, or either of them,—the Commission may by its order require that such connection be made and facilities supplied, and that through conversations be transmitted thereby; . . ."

The language of the several sections above quoted is very plain, and to the effect: That the Commission may order and require connections and facilities supplied and through conversations transmitted thereby, where a telephone corporation, or person engaged in the telephone business, whose lines, with the lines of another telephone corporation, or person engaged in the

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telephone business, (1) form a continuous line of communication between different localities; (2) or could be made continuous by the construction and maintenance of suitable connections between the several lines at common points, for the transmission of conversations between different localities. But these two propositions are subject to the qualifications: (a) That said order for connections between different localities shall be made only where efficient service can be obtained without injustice to either company, and without substantial impairment or detriment to the service to be rendered by either company, and when the necessity exists therefor; and (b) where the different localities cannot be communicated with or reached by the lines of either company alone, and where such service is not already established or provided for.

[1] It is therefore very clear that to enable the Commission to act it must be established: (1) That neither one of the companies has lines or facilities for connections which communicate with or reach both of the localities; and (2) that the two companies have lines which either form, or can be connected so as to form, a continuous line between two localities; and that if there is already communication by direct single line, or joint continuous line of some company or companies, there should appear from the evidence that public necessity existed for the linking of the two new companies whose lines are continuous when joined together, and neither of which reaches both localities by its own line or its facilities or connections.

[2] The definition of the term "localities" under this section of the act must be determined by the particular circumstances of each case. In this case in the opinion of the Commission, the term "locality" with respect to the Blairsville Telephone Company means the immediate territory served by the Blairsville Telephone Company in Indiana county and in Westmoreland county; and that the other "locality" in this case is that of the Windber Telephone Company, which includes the territory served by that company in the vicinity of Windber in Somerset county. From the testimony these two principal exchanges of the Blairsville Telephone Company and the Windber Telephone Company are at a distance of 33 miles from each other.

[3] We have, therefore, the proposition of the Windber

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Telephone Company having through its facilities and connections with the Bell Telephone Company a connection and interchange of service with both localities. There is no evidence to indicate that the Windber Telephone Company, through its connections with the Bell Telephone Company, is not providing adequate service to the locality of the Blairsville Telephone Company. Nor is there any evidence that a public necessity exists for the establishment of a new line between these two localities. It is true that a petition has been presented by a number of the subscribers of the Blairsville Telephone Company, asking for the connection through the Johnstown Telephone Company with the Windber Telephone Company, but such petition does not show or assert any public necessity for that service. It may be convenient for the subscribers of the Blairsville Telephone Company to have the additional facility, but this Commission has only the power granted under the act of assembly by which it was created, and the power to compel connection between telephone companies is limited by the two sections of the act to which we have referred. Of course, if there was affirmative evidence that the Windber Telephone Company with its facilities and connections with the Bell Telephone Company was not furnishing efficient or adequate service between Windber and Blairsville, a different question would arise.

[4] There is an intimation in this case that the Somerset Telephone Company, which is connected with the Johnstown Telephone Company, is furnishing service through the Johnstown Telephone Company with the Windber Telephone Company, and we assume that this intimation was made for the purpose of showing that the Windber Telephone Company is giving undue preference to the Somerset Telephone Company. But it does not appear from the evidence that the Somerset Telephone Company is in like position with the Blairsville Telephone Company, either as to location or as to the requirements of the subscribers. Indeed, the Somerset Telephone Company is in an entirely different locality from the Blairsville Telephone Company; and it may be, for all that appears in the evidence, that its connection with the Johnstown Telephone Company is perfectly just, proper, and reasonable, without the

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effect of giving any undue preference as against the Blairsville Telephone Company, or any other company similarly situated.

We have come to the conclusion that since the two localities are reached by the lines, facilities, and connections of the respondent, the Windber Telephone Company, since adequate service is already provided between the localities in question; and as there is no evidence of any undue preference granted to any company,—the complaint should be dismissed.

ILLINOIS PUBLIC UTILITIES COMMISSION.

ASSUMPTION MUTUAL TELEPHONE COMPANY

v.

CENTRAL UNION TELEPHONE COMPANY et al.

[No. 3689.]

Service — Telephone — Physical connections.

The right of priority of a telephone company to advantages accruing to it by reason of its connection with a long-distance line will be protected, and where public necessity and convenience demand that the lines of another company be connected with the long-distance line through the switch board and lines of the original company, and it appears that no injury would thereby result to either service, such connection may be ordered and the original company allowed to impose a charge for its service over the usual toll rate by the long-distance company in an amount sufficient to save it from injury.

[August 19, 1915.]

APPLICATION for the establishment of a physical connection between the telephone lines of the complainant and the lines of the defendant; granted; defendant allowed to charge a reasonable amount for use of its facilities.

The appearances are set out in the opinion.

By the Commission: This case arises from an informal complaint filed with the Commission by the Assumption Mutual Telephone Company, alleging refusal on the part of the Assumption Telephone Company to establish a physical connection with the lines of the complainant for toll service. The Commission made an effort to adjust the complaint informally, and suggested a plan of settlement, but the Assumption Telephone Company was not disposed to give the matter any consideration, and

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subsequently formal complaint was filed by the Assumption Mutual Telephone Company.

The complaint represents that the complainant is a public utility engaged in the operation and management of a telephone system in and around the city of Assumption; that the Assumption Telephone Company also is a public utility engaged in the operation and management of a telephone system in and around the city of Assumption; that the receivers, Central Union Telephone Company, are engaged in the handling of "long-distance telephone service" from the city of Assumption, and that by virtue of a contract between the Assumption Telephone Company and the Central Union Telephone Company the switching service of the said receivers, Central Union Telephone Company, is performed by the Assumption Telephone Company.

The complaint further represents that the complainant has a large number of telephones in the city of Assumption and the rural territory contiguous thereto, to wit, 300 telephones in the city and approximately 500 telephones in the country, with a complete equipment for the carrying on of a local and long-distance telephone business; that application was made to the defendants to receive, transmit, and deliver messages or conversations from the subscribers of the complainant over the lines of said defendants; that the defendants refused to enter into any arrangements for the exchange of messages between the lines of the complainant and the lines of said defendants, and that such refusal constitutes a violation of § 44 of the act to provide for the regulation of public utilities now in force in the state of Illinois.

The defendants, in their answer, deny that public convenience and necessity require the establishment of a physical connection between the lines of the complainant and the lines of the defendants, and aver that the Assumption Telephone Company has expended large sums of money in installing and maintaining adequate facilities for the handling of local and long-distance business in the city of Assumption and over the toll-line system of the Central Union Telephone Company; that the establishment of the connection sought by the complainant would result in an impairment of the investments of the defendant, Assumption Telephone Company; that the long-distance or toll business

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originating at Assumption does not produce sufficient revenue to enable the defendants to maintain efficient long-distance toll service if said revenue is divided between the Assumption Telephone Company and the complainant; that the complainant's system is a grounded system, giving poor and inefficient service, and that the long-distance toll service would be greatly impaired if the physical connection sought should be established.

Hearing was held at Springfield, Illinois, May 5, 1915. Leslie J. Taylor, of Taylor & Taylor, attorneys, appeared for the complainant; Ben B. Boynton, attorney, appeared for the defendants.

It appeared from the testimony presented at the hearing that the Assumption Telephone Company, hereinafter referred to as the "Assumption company," operates a telephone exchange in the city of Assumption, serving about 250 subscribers, a few of which are rural subscribers; that the Assumption company has physical connection with the Christian County Telephone Company, of Taylorville, which operates an extensive telephone system in Christian county, by means of a toll line owned jointly by the two companies extending from Assumption to Taylorville; that the Central Union Telephone Company, hereinafter referred to as the "Central Union Company," has two copper metallic toll lines extending from Pana to Assumption, both of which are connected into the switch board of the Assumption company, and that by means of such lines subscribers of the Assumption company have access to the toll-line system of the Central union company, which is a part of the "Bell System," and its connecting companies.

It further appeared that the Assumption Mutual Telephone Company, hereinafter referred to as the "Mutual company," also operates a telephone exchange in the city of Assumption, serving about 300 subscribers in the city and about 500 subscribers in the rural territory contiguous thereto; that the Mutual company has toll-line connections with the Christian County Telephone Company, of Taylorville, and the Decatur Home Telephone Company, of Decatur, an independent company operating in opposition to the Central Union Company at Decatur; that although the Central Union Company has connection with

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the Christian County Telephone Company and adequate facilities for the handling of toll business with the city of Taylorville, it refuses to accept any messages from the Mutual company routed via Taylorville, and that by reason of the limited toll-line facilities of the Mutual company, its subscribers are unable to communicate with many points in the immediate vicinity of Assumption and with distant points reached only over toll-line system of the Central union company.

It was contended by the Assumption company that it has expended large sums of money in the development of a local exchange system in the city of Assumption, and in providing facilities for the handling of "long-distance" business with the Central union company; that it was the first company to build and operate a telephone exchange in the city of Assumption, and has adequate facilities for the furnishing of an efficient and satisfactory service to the public; that a connection between the lines of the Assumption company and the Central union company has existed for a number of years, and is the only connection that the Central union company has ever had in the city of Assumption; that a large number of the telephones of the Mutual company in the city of Assumption are duplicates; that, with few exceptions, every business house in the city has the service of the Assumption company, and that the establishment of a physical connection between the lines of the Assumption company and the lines of the Mutual company, or between the lines of the Mutual company and the toll lines of the Central union company, would result in loss of subscribers and irreparable injury to the Assumption company.

It was contended by the complainant that its entire system is in good physical condition; that while the rural lines are grounded, a greater part of the lines in the city of Assumption are metallic; that the local-exchange service and such long-distance service as it is now able to furnish is entirely satisfactory to its subscribers; that many people in the city of Assumption and the rural territory contiguous thereto are deprived of "long-distance service" by reason of the refusal of the Assumption company and Central union company to establish physical connection with the lines of the complainant; that public con-

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venience and necessity demand and require the establishment of a connection between the lines of the complainant and the toll-line system of the Central union company, and that public convenience would properly be served through the Central union company connecting one of its Pana-Assumption toll lines with the switch board of the Mutual company.

The Central union company does not oppose the establishment of a physical connection, provided it is made by means of a trunk line between the switch board of the Assumption company and the switch board of the complainant. A. J. Parsons, commercial superintendent of the Central union company, testifying as an expert on behalf of the Assumption company, stated that it is very desirable that all toll business originating and terminating at Assumption should come through one channel; that if two routes were used, delays would occur in the handling of calls, incorrect reports would be made to the patrons, and errors would likely occur in making toll charges.

From a careful consideration of the testimony presented at the hearing and the briefs filed and arguments made, it appears that many users of telephone service in the city of Assumption and the rural territory contiguous thereto are unable to transmit messages to, and communicate with, distant points by reason of the divided telephone service in the city of Assumption and the limited toll-line facilities of the Mutual company.

It further appears that the Assumption company has a right of priority in the connection with the toll-line system of the Central union company; that such right should be recognized and protected, and that the efficiency of the service at Assumption and at distant points covered by the toll-line system of the Central union company and its connecting companies would be impaired if any change were made in the arrangement of the two toll lines extending from Pana to Assumption and connected with the switch board of the Assumption company.

In considering applications for physical connection between the lines of two competing companies, the Commission has held that the facts must show clearly that public convenience and necessity demand and require a physical connection; that the establishment of such connection is practicable and would not impair the service of either company, and that it would not

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seriously interfere with, or jeopardize, private rights, and a lengthy discussion of these conditions in connection with this case is unnecessary.

In the light of the facts presented in this case, the Commission is of the opinion that a physical connection should be established between the switch boards of the Assumption Mutual Telephone Company and the Assumption Telephone company in the city of Assumption for toll service.

The testimony clearly shows that the Assumption company will suffer a loss of subscribers if a physical connection is made between the lines of the Mutual company and the Central union company, unless some protective measure is applied. If the connection is made by means of a trunk line between the switch board of the complainant and the Assumption company, the facilities of the Central union company need not be disturbed.

It would be unlawful for the Central union company to charge a different rate for toll service rendered to the subscribers of the complainant than it charges for service to the subscribers of the Assumption company, but the Assumption company may charge a reasonable amount for the use of its facilities, which will protect it against injury from such connection.

The law provides that the companies shall agree upon the terms, and in case an agreement cannot be reached, the Commission shall fix the terms. It is not necessary, therefore, for the Commission to fix the terms in this order.

It is therefore *ordered* that the Assumption Telephone Company and the Assumption Mutual Telephone Company make such physical connections between their exchanges in the city of Assumption as is required for the furnishing of toll service over the lines of the Central Union Telephone Company and its connecting companies to the subscribers of the Assumption Mutual Telephone Company, and that such toll service be as complete as is furnished to the subscribers of the Assumption Telephone Company.

It is further *ordered* that the cost of making such connection shall be borne by the Assumption Mutual Telephone Company.

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Sixty days is deemed a reasonable time within which the companies shall comply with this order.

By order of the Commission, this 19th day of August, 1915, dated at Springfield, Illinois.

Note.—Physical connection beween the lines of telephone companies, joint operating agreements, and joint use of facilities.

In Moher v. Pearl City Independent Teleph. Co. No. 2938, July 1, 1915, the Illinois Commission ordered that connection be made between the lines of two companies operating in a city and its vicinity, where a substantial number of subscribers of both companies demanded the connection and the service of neither company was adequate, and protected the company charging the higher rates by requiring that the connection should be made on terms to prevent loss to it.

In Farmers United Teleph. Co. v. Central U. Teleph. Co. No. 1330, June 2, 1915, the Indiana Commission ordered defendant to make connection at Columbia City between its lines and those of the plaintiff, whereby the latter might receive and transmit long-distance messages.

In Pike County Teleph. Co. v. Flint Kyle Teleph. Co. No. 1462, Aug. 5, 1915, the Indiana Commission refused to authorize a telephone company to make physical connections with the lines of another company which had physical connections with the lines of a third company which served the same territory as the complainant, on the ground that public convenience and necessity did not require the proposed connection, and that such connection and use of the defendant's lines would result in irreparable injury to it and the third company, and be detrimental to the service to be rendered by the companies.

In Whitley County Teleph Co. v. Farmers Mut. Teleph. Co. No. 1217, Aug. 5, 1915, the Indiana Commission ordered that connection be made between the lines of said companies at their exchanges in Columbia City, South Whitley, Larwill, Laud, and Etna, at their joint expense; and that a third company should charge the same fee to subscribers of either company desiring to be switched to its service.

In Belmont & P. V. Teleph. Co. v. Wisconsin Teleph. Co. March 29, 1915, the Wisconsin Commission in fixing the terms for connecting the lines of a petitioning company with that of another company for toll service, by use of the switch board of a third company, held that the switching company would be adequately protected by requiring the petitioner to pay, in addition to the regular toll rates, 5 or 10 cents for distances under or over 50 miles, in view of the fact that

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the antiduplication statute restricted the petitioner in competing with the switching company.

In Blay v. Strawberry Teleph. Co. August 27, 1915, all the telephone companies jointly using a switch board at a central station were ordered by the Wisconsin Commission to maintain in proper condition the lines, instruments, and other equipment used on their telephone systems, and to conform to the fixed standards of telephone service when poor service resulted in the inadequate maintenance of lines and equipment of the companies.

In this case it was also ordered that the use of a switch board at a central station of a telephone company as a toll station, which interrupted the regular switch-board service, be discontinued, and the various companies jointly maintaining the board were ordered to install a separate instrument at the central office for the use of the public for toll messages.

In Barron v. Barron County Teleph. Co. July 6, 1915, the Wisconsin Commission in ordering physical connection between the lines of two telephone companies, operating exchanges in different villages, by requiring the use of a toll line of one of them, protected such toll service and investment in the line by permitting that company to receive the larger part of the charges which were ordered to be made for intervillage calls.

Contracts between telephone companies for connection between lines and joint operation or interchange of service were approved by Commissions in the following cases:

Illinois.—In Re Commercial Teleph. & Teleg. Co. No. 4158, Sept. 2, 1915, between said company and the People's Telephone Company of Southern Illinois, of Rinard, Wayne county.

In Re De Kalb County Teleph. Co. No. 4062, Aug. 19, 1915, between said company and the Farmers Union Telephone Company, of Kirkland, both of De Kalb county.

In Re Farmers' Mut. Teleph. Co. No. 3522, Sept. 2, 1915, between said company and the village of Crossville (municipal owned system).

In Re Freeport Teleph. Co. No. 3529, April 8, 1915, between said company and the Orangeville Independent Telephone Company, of Orangeville, both of Stephenson county.

In Re Freeport Teleph. Exch. Co. No. 3579, April 8, 1915, between said company and the Pearl City Mutual Telephone Company, of Pearl City, both of Stephenson county.

In Re Mississippi Valley Teleph. Co. No. 3899, Aug. 1, 1915, between said company and the Burnside Telephone Company, of Burnside, both of Hancock county.

In Re Reorganization Committee of Western Illinois Teleph. Co. No. 3665, May 6, 1915, between said committee and the Industry Telephone Company, of Industry, McDonough county.

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In Re Reorganization Committee of Western Illinois Teleph. Co. No. 3374, April 22, 1915, between said committee and the Schuyler Telephone Company, of Rushville, Schuyler county.

In Re Westfield-Kansas Teleph. Co. No. 4137, Sept. 2, 1915, between said company and the Kansas Mutual Telephone Company, of Kansas, Edgar county.

In Re Receivers of Central U. Teleph. Co. No. 3815, May 20, 1915, between said receivers and the Altona Mutual Telephone Company, of Altona, Knox county.

In Re Receivers of Central U. Teleph. Co. No. 3594, May 6, 1915, between said receivers and the Boone County Rural Telephone Company, of Belvediere, Boone county.

In Re Receivers of Central U. Teleph. Co. No. 3690, April 8, 1915, between said receivers and L. W. Conarroe and another doing business as the Chatsworth Telephone Company, of Chatsworth, Livingston county.

In Re Receivers of Central U. Teleph. Co. No. 3715, April 22, 1915, between said receivers and the Effingham County Telephone Company, of Altamont, Effingham county.

In Re Receivers of Central U. Teleph. Co. No. 3655, April 8, 1915, between said receivers and the Farmers Mutual Telephone Company, of Carpenter, Madison county.

In Re Receivers of Central U. Teleph. Co. No. 3595, May 6, 1915, between said receivers and the Free Line Telephone Company, of Forrest, Livingston county.

In Re Receivers of Central U. Teleph. Co. No. 3915, July 1, 1915, between said receivers and the Galva Telephone Company, of Galva, Henry county.

In Re Receivers of Central U. Teleph. Co. No. 3714, April 22, 1915, between said receivers and the Grantfork Mutual Telephone Company, of Grantfork, Madison county.

In Re Receivers of Central U. Teleph. Co. No. 3477, March 4, 1915, between said receivers and the Mississippi Valley Telephone Company, of Carthage, Hancock county.

In Re Receivers of Central U. Teleph. Co. No. 3472, March 4, 1915, between said receivers and the Newton Telephone Company, of Newton, Jasper county.

In Re Receivers of Central U. Teleph. Co. No. 3814, May 6, 1915, between said receivers and the Payson Farmers Telephone Company, of Payson, Adams county.

In Re Receivers of Central U. Teleph. Co. No. 3640, April 8, 1915, between said receivers and the Rio Telephone Exchange, of Rio, Knox county.

In Re Receivers of Central U. Teleph. Co. between said receivers and Earl Smith and another doing business as the Mulford Telephone Company, of Mulford, Iroquois county.

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In Re Receivers of Central U. Teleph Co. No. 3656, April 8, 1915, between said receivers and the Thebes & Cairo Telephone Company, of Thebes, Alexander county.

In Re Receivers of Central U. Teleph. Co. No. 3681, April 8, 1915, between said receivers and the Union Telephone Company, of Chatham, Sangamon county.

In Re Receivers of Central U. Teleph. Co. No. 3670, April 8, 1915, between said receivers and George H. Vermillion doing business as the London Mills Telephone Company, of London Mills, Fulton county.

In Re Receivers of Central U. Teleph. Co. No. 3015, May 20, 1915, between said receivers and J. W. Warren doing business as the Warren Mutual Telephone Company, of Bath, Mason county.

Ohio.—In Re Bascom Farmers Mut. Teleph. Co. No. 538, June 30, 1915, between said company and the Tiffin Consolidated Telephone Company, of Tiffin.

In Re Central Dist. Teleph. Co. No. 518, June 4, 1915, between said company and B. A. Latham, trading as the Freeport Telephone Company, of Freeport.

In Re Central Dist. Teleph. Co. No. 492, May 21, 1915, between said company and Hopesdale Telephone Company, of Hopesdale.

In Re Ft. Seneca Mut. Teleph. Co. No. 537, June 30, 1915, between said company and the Tiffin Consolidated Telephone Company, of Tiffin.

In Re Jefferson & M. Teleph. Co. No. 487, May 21, 1915, between said company and the receivers of the Central Union Telephone Company, of Chicago, Illinois.

In Re Leister, Receiver for the Portland Mutual Telephone Company, of Morrison Road, et al. No. 535, June 30, 1915, between said receiver and the Tiffin Consolidated Telephone Company, of Tiffin.

In Re Melmore Mut. Teleph. Co. No. 536, June 30, 1915, between said company and the Tiffin Consolidated Telephone Company, of Tiffin county.

In Re Mt. Grab Teleph. Co. No. 467, April 29, 1915, between said company and the receivers of the Central Union Telephone Company, of Chicago, Illinois.

In Re New Concord Teleph. Co. No. 410, January 15, 1915, between said company and the receivers of the Central Union Telephone Company, of Chicago, Illinois.

In Re Wellington Teleph. Co. No. 593, September 11, 1915, between said company and the receivers of the Central Union Telephone Company, of Chicago, Illinois.

Contracts between utilities for the joint use of facilities were approved in the following cases:

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Telephone companies.

Illinois.—In Re Central Illinois Electric Co. No. 3937, July 1, 1915, between said company and the receivers of the Central Union Telephone Company, for use of poles in Mechanicsburg, Sangamon county.

In Re Receivers of Central U. Teleph. Co. No. 3768, May 6, 1915, between said receivers and the Altona Telephone Company, for use of poles between Altona and a point one mile east of Altona, Knox county.

In Re Receivers of Central U. Teleph. Co. No. 3979, Aug. 5, 1915, between said receivers and the Bishop Hill Mutual Telephone Company, for use of poles in Bishop Hill.

In Re Galesburg U. Teleph. Co. No. 3314, May 6, 1915, between said company and the receivers of the Central Union Telephone Company, for use of poles in the vicinity south of St. Augustine, Knox county.

In Re Lebanon Teleph. Exch. No. 3276, May 20, 1915, between said company and the Commercial Telephone & Telegraph Company, for the use of poles near the east limits of Lebanon, St. Clair county.

In Re Rockford City Traction Co. No. 3940, July 1, 1915, between said company and the receivers of the Central Union Telephone Company, for use of poles in Rockford, Winnebago county.

Utilities not exclusively telephone.

Idaho.— In Re Mountain States Teleph. & Teleg. Co. Case No. 106, Order No. 250, July 2, 1915, between said company and the Electrical Investment Company, for use of supports for wires near Boise City.

Illinois.—In Re Central U. Teleph. Co. Case No. 3574, March 18, 1915, between said company and the Consolidated Light & Power Company, for use of poles on Railroad Avenue, Kewanee.

In Re Chicago & E. I. R. Co. No. L-1019, Sept. 2, 1915, between said company and the Michigan Central Railroad Company, for use of real estate in Chicago Heights.

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WASHINGTON PUBLIC SERVICE COMMISSION.

IN RE RULES AND REGULATIONS PERTAINING TO PAYMENT FOR TELEPHONE SERVICE.

[Order No. 1791.]

Payment — Jurisdiction of Commission — Deposits and advance payments.

1. The fact that rules with reference to the requirement of a deposit or other security upon the installation of telephone instruments, and with reference to the payment for service in advance, affect rates, does not deprive the Commission from acting under chapter 117, § 85, of the Washington Laws of 1911, in promulgating rules and regulations with reference thereto.

Discrimination — Payment — Requiring deposit of some and not of others.

2. The question whether a deposit should be required of patrons of a Public Service corporation to insure the company against loss from nonpayment of bills should not be left to the discretion of the employees of the corporation; but if a deposit is required at all, it should be required of all patrons without discrimination.

Payment — Deposits — Ordered discontinued as unjust.

3. The practice of telephone company of requiring a deposit or cancelation fee, or any money, as a condition precedent to service, was ordered discontinued as unreasonable and unjust, except as to local long-distance calls originating at pay stations.

Payment — Rules as to advance.

4. Telephone companies in Washington are permitted to require advance payments for services under conditions defined by the Commission.

[August 20, 1915.]

ORDER relating to rules and regulations governing method of collection of accounts for local exchange or long-distance service by telephone companies subject to the provisions of chapter 117, of the Session Laws of 1911, of the State of Washington, and relating to security for installation of instruments or other purposes.

By the Commission: On the 24th day of September, 1914, the Public Service Commission of Washington promulgated rules No. 1 and No. 2 with reference to the requirement of a deposit or other security for the installation of instruments to be used by subscribers in telephonic communication for hire within the state of Washington; also requiring payment in advance from

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month to month for local exchange service, etc.; and also providing for objections to such orders by a person, firm, company, corporation, or association of persons engaged in the telephone business, and fixing the 27th day of October, 1914, at 9.30 o'clock A. M., at the assembly room of the New Seattle Chamber of Commerce as the time and place to hear objections to said rules.

That on the said 27th day of October, 1914, the Commission being represented by its chairman, Charles A. Reynolds, and Commissioners Arthur A. Lewis and Frank R. Spinning, and its attorney, Scott Z. Henderson, the several telephone companies appearing in person or by their attorneys, objections were made by the companies to the proceedings and to the rules and to the promulgation thereof.

[1] The defendant, the Pacific Telephone & Telegraph Company, objected to the proceedings on the ground and for the reason that it claimed the Commission was without jurisdiction to promulgate said rules, and that said rules affected rates, and could only be considered in a rate hearing based on valuation.

Section 85 of the Session Laws of 1911, chapter 117, page 595, is in part as follows:

"The Commission is hereby authorized and empowered to adopt, promulgate, and issue rules and regulations covering the . . . transmission and delivery of messages and conversations, . . . and generally such rules as pertain to the comfort and convenience of the public concerning the subjects treated of in this act. Such rules and regulations shall be promulgated and issued by the Commission on its own motion, and shall be served on the public service company affected thereby as other orders of the Commission are served. Any public service company affected thereby, and deeming such rules and regulations, or any of them, improper, unjust, unreasonable, or contrary to law, may within twenty days from the date of service of such order upon it file objections thereto with the Commission, specifying the particular grounds for such objections. The Commission shall, upon receipt of such objections, fix a time and place for hearing the same, and after a full hearing may make such changes and modifications thereto, if any, as the evidence may justify."

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This section disposes of the question of jurisdiction. It is apparent that any rule or regulation that would require or permit any service on the part of the company, or that would compel any patron of the company to pay money that would not otherwise be required, would affect the rates, and if the fact that the rule or regulation affects rates prevents the Commission from acting under § 85, no rule or regulation could be promulgated by the Commission.

The objections, therefore, of the telephone company were overruled by the Commission and testimony introduced by the telephone companies on said 27th day of October, 1914, and then continued to December 15, 1914, to give the companies an opportunity to present additional testimony. On December 15, 1914, further testimony was heard by the Commission, and the hearing continued to a date to be decided upon later. On July 1, 1915, final hearing was set for August 5, 1915, at which time all of the telephone companies doing business in the state were notified to appear and present such further testimony as they might desire, and all telephone companies in the state were at said time given opportunity to be heard, and were heard, and the matter was then finally submitted to the Commission for its decision.

[2] Of the 159 telephone companies operating in the state of Washington, it was shown that twelve required a deposit as a condition precedent to service. The method of applying deposits was described by Mr. Phillips, division commercial superintendent of the Pacific Telephone & Telegraph Company, as follows:

Q. The $5 deposit item, then, is not a part of the contract of the Pacific Telephone & Telegraph Company, is it?

A. No, it is not. (Transcript, p. 4.) . . . We have endeavored to use discretion in applying this deposit.

Q. Then as I understand it, this deposit is required of some subscribers whom you have doubts as to their ability to pay, and is not required of other subscribers whom you are satisfied have ability to pay, is that right?

A. I cannot answer that just that way. We have used discretion and we might ask the deposit.

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Q. That is the basis of your discretion?

A. We might ask a deposit of a man who was fully able to pay, but we have used our discretion in many ways, for instance, if he already had a business telephone and had had one for some time and wanted one in his residence, that would be one reason for waiving the deposit, and if we were supplying a telephone to a state or charitable institution, we would consider that a reason for waiving the deposit. There are many factors that are considered in waiving the deposit.

Q. You determine the question as to whether or not they will be required to pay, do you not?

A. We determine the question." (Transcript, p. 8.)

It will be seen that the question of whether or not a patron of the telephone company shall be required to make a deposit of a sum of money as a condition precedent to service is one of fact, to be decided by the various clerks in the employ of the telephone company. These clerks are permitted to exercise their discretion in the matter, there being no fixed rules by which the responsible patrons are separated from those of doubtful responsibility.

The total deposits required by the Pacific Telephone & Telegraph Company from its patrons in the state of Washington is approximately $58,000. The Pacific Telephone & Telegraph Company, it will be seen, has found 11,600 of its patrons in the state of Washington who are of doubtful responsibility.

This dividing of the patrons of a utility into classes on the basis of honesty or ability to pay savors very strongly of discrimination. The Constitution of our state, by strong inference, and the statute (Session Laws of 1911, chap. 117, § 40), expressly forbid discrimination. The statistics furnished by the companies, based upon their experience of loss and gain as a result of the deposit, are very unsatisfactory. Common experience shows that the average person who makes a deposit to cover a default will allow it to be absorbed by the service. The company, having the deposit as security for the default of the patron, will naturally absorb the deposit rather than enforce payment. These statistics do not prove that all money deposited and absorbed marks the amount the company would lose if no deposit were made.

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The argument is advanced that it is not fair to the honest patron to require him to bear the burden of loss occasioned by the dishonest or impecunious patron. This argument is not justified by the facts. Telephone companies have at their command methods of enforcing collections which are not available to merchants or other business concerns generally. With proper management on the part of telephone companies it should not be necessary to require honest patrons to bear any burden which should be borne by others.

The present system of requiring some patrons to make deposits, without requiring all patrons to make deposits, is a source of continual controversy and ill-will between the companies and many of their patrons. A man's honesty or willingness to pay cannot always be measured by the amount of property he may possess; neither can a person's honesty or ability to pay be measured always by his appearance.

The company claims to exercise a wise discretion, but we doubt the wisdom of the exercise of discretion under such circumstances, even as a benefit to the company itself. It seems wholly impracticable to divide patrons of a telephone company into two classes,—the honest and the doubtful. Such a division brings upon the company unnecessary criticism and complaints.

The Commission, therefore, is of the opinion that if a deposit is to be required at all, it must be required of all patrons without discrimination. The present method and practice of the company is contrary to the basic principles of utility regulation, and must, therefore, be discontinued.

[3] The question, therefore, resolves itself to this: Shall all patrons of telephone companies be required to deposit $5, or any other sum, as a condition precedent to service?

The telephone company has methods of collection not usual to most other classes of business. It has the right to collect in advance for service; it can refuse service to those who refuse to pay its charges in advance, or who refuse to pay for services rendered. (See recent decision of United States Supreme Court.) Southwestern Teleph. & Teleg. Co. v. Danaher, 238 U. S. 482, 59 L. ed. —, L.R.A.—, —, P.U.R. 1915D, 571, 35 Sup. Ct. Rep. 886, in error, to the Supreme Court of the United States. Opinion by Justice Van Devanter.

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The telephone has become a modern necessity. Most citizens are required to have a telephone which can only be obtained by the payment of all charges due or which are payable in advance. To require payment in advance and then, in addition, to require a deposit, seems to be giving to the telephone company rights and privileges not accorded to any other business. This privilege of collecting in advance and refusing service to those indebted to the company more than offsets the effect of the requirement imposed by law upon the company to afford service to all who apply, without discrimination.

It is therefore ordered that the practice of requiring a deposit or cancelation fee, or any money, as a condition precedent to service by a telephone company in this state, other than as provided herein, is hereby canceled, vacated, and set aside as unreasonable and unjust, and telephone companies in this state are ordered and directed to discontinue said practice, and to return to all persons heretofore making such deposits, or any deposit, as a cancelation fee as a condition precedent to service or otherwise, all moneys now in its possession or heretofore or hereafter claimed by it in the manner aforesaid, within twenty days from the date upon which this order becomes effective.

The Public Service Commission of Washington after considering all of the evidence submitted herein, and the rules and regulations of telephone companies relating to securing for installation of instruments for payment of accounts for local exchange and long-distance service rendered by said companies and for other purposes, is of the opinion, finds and concludes, that the following rules No. 1 and No. 2 are just, fair, and reasonable rules and regulations, and should be adopted, promulgated, and issued by the Public Service Commission of Washington, and followed and enforced by each and every telephone company owning, operating, or managing any telephone line or part of telephone line used in the conducting of the business of affording telephone communication for hire within the state of Washington, *viz:*

Rule 1. No cash deposit or other security for the installation of instrument for the payment of accounts for local exchange service or long-distance service between points in the state of Washington, or for any other purpose, shall be re-

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quired of any telephone subscriber by any telephone company owning, operating, or managing any telephone line or part of telephone line used in the conduct of the business of affording telephonic communication for hire within the state of Washington: Provided, that deposit may be required for any local or long-distance call originating at a pay station.

[4] Rule 2. Any telephone company may exact from any subscriber two months' rental in advance at the time of ordering service, such charge in no case to exceed the sum of $5; if the service charge ordered shall exceed the sum of $5 per month, the patron shall pay from month to month in advance. If the service charge shall not exceed the sum of $5, the portion not absorbed in the first month's rental shall be applied upon the succeeding month's rental, and the patron shall thereafter pay from month to month in advance. No advance payment shall be exacted from a patron of the company on account of change of residence or phone. The company may discontinue any telephone, private exchange, or other instrumentality, device, or utility of any subscriber, and discontinue such subscriber's service on and after the expiration of ten days from the date on which any account for local exchange service or long-distance service becomes due and payable (in advance or otherwise) when any such account remains unpaid after the expiration of ten days from said date.

Wherefore it is *ordered* that said rules Nos. 1 and 2 be, and the same hereby are, adopted, promulgated, and issued.

The Public Service Commission of Washington, by C. A. Reynolds, Chairman; Arthur A. Lewis, and Frank R. Spinning, Commissioners.

MAINE PUBLIC UTILITIES COMMISSION.

IN RE MAINE CENTRAL RAILROAD COMPANY.

[R. R. No. 80.]

Rates — Reduced charges for charitable and benevolent purposes.

A railroad company was permitted to grant reduced rates for transportation to the general public desiring to attend a public musi-

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cal festival consisting largely of chorus singing, and a less rate to members of the chorus, upon the ground that the festival, with its incident instruction to the chorus and its performance before the public, is educational, and hence a "charity or benevolence" within the provisions of the utility act, permitting reduced rates.

[September 2, 1915.]

PETITION of the Maine Central Railroad Company for permission to grant its service at reduced rates for transportation of persons to the Maine Musical Festival, at Bangor, and at Portland; granted.

By the Commission: The Maine Central Railroad Company, by written petition, represents to this Commission that in the early part of October, this year, an event known as the "Maine Music Festival" is to be held during three days of one week at Bangor and during three days of another week at Portland; and that this festival is an event which has taken place at Bangor and Portland each year for several years.

It further appears that during several months preceding such festival in each county in the state an organization exists known as the "Festival Chorus," consisting of our musically inclined men and women, who, under expert instruction, and in the form of rehearsals, are receiving a somewhat liberal education in music, and who, at the time of the above-named festival, constitute an important part of the festival in the form of the chorus, singing for the public under the direction of an eminent impresario.

The petitioner has been in the habit of granting reduced rate transportation to the general public during the days upon which the festival is held in each of the above-named cities, and has also granted to the chorus a rate less than that granted the general public.

The petitioner asks that this Commission approve the granting of such reduced rate transportation for the festival this year, basing their request upon the theory that such festival is educational to the members of the chorus and to the general public.

The Utility act provides that a public utility may grant its service at reduced rates for charitable and benevolent purposes, upon approval of this Commission. Courts of law have de-

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fined the words "charity" and "benevolence;" and the definition most often quoted is as follows: "That which is for the benefit of an indefinite number of persons, either by bringing their minds or hearts upder the influence of education or religion, by relieving their bodies from disèase, suffering, or constraint, by assisting them to establish thenselves in life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government."

We believe that the Maine Music Festival, with its antecedent and incident instruction to the chorus and its performance before the public, is educational, and hence within the definition of "charity and benevolence," and we feel that it is our duty to grant the petition.

The petition is in part as follows: "For the Maine Music Festival at Bangor and at Portland in October we would like to arrange to offer the same rates and conditions to the public as last year. We issued last year long-limit tickets covering the three days of the festival at Bangor and covering the three days of the festival at Portland, but none covering both events, at rate not to exceed 2 cents per mile in each direction. In addition we issued short-limit tickets to allow patrons to visit the festival on any date of their selection, and attend the concert that evening, returning on the following day, at arbitrary rates approximating 1½ cents per mile in each direction, until a zone was reached where, by the application of that basis, the fare became so high that it was prohibitive. For members of the chorus, who in a large measure contribute to the success of the festival and who numbered in the Bangor Chorus 131, and in the Portland Chorus 217, we sold excursion tickets at rate 1 cent per mile in each direction, good during the entire festival period, at Bangor and Portland respectively. We would like permission to name the same rates and conditions this year as last."

It is *ordered* that the approval of this Commission be given the Maine Central Railroad Company to grant the services above named at the rates and upon the conditions above named, such services being for charitable and benevolent purposes, and in accordance with the provisions of § 32, chapter 129, Public Laws of the State of Maine for the year 1913.

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Given under the hand and seal of the Public Utilities Commission, at Augusta, this 2d day of September, A. D. 1915.

Benjamin F. Cleaves, Wm. B. Skelton, Chas. W. Mullen, Public Utilities Commission of Maine.

Note.—Free and reduced rates.

In Re Appleton, April 28, 1915, the Wisconsin Railroad Commission held that a municipal water plant cannot give free service to schools, fire stations, and other public buildings. To the same effect is In Re Rumford Falls Light & Water Co. P.U.R. 1915A, 616, holding that reduced rates cannot be granted to public schools under the Maine Utilities act, which allows reduced rates for charitable and benevolent purposes.

In Re Free Teleph. Service, Jan. 21, 1915, the Ohio Public Utilities Commission held that free telephone exchange between a utility and a mutual company is not objectionable if it does not impair the service or affect the business of the utility.

In Re Eastern Oregon Light & P. Co. Aug. 25, 1915, the Oregon Commission held that newspapers may not be given special rates for electric current used by them in the operation of their machinery, under § 63 of Public Utilities act (chapter 279 of General Laws of 1911), permitting reductions in favor of specified classes of persons.

In People v. Chicago & A. R. Co. No. 3318, May 20, 1915, the Illinois Public Utilities Commission held that in making commutation rates, a railroad must necessarily take into consideration the amount of business, the character of the service, and the convenience of the largest number of its patrons.

It was also held in the above case that it is fair to assume that a railroad company selling a 60-ride ticket has in mind the reasonable requirements of the greatest number of its patrons, and unless evidence is deduced clearly establishing the fact that the company is not meeting in a reasonable way the general demands of its patrons, the Commission will not be justified in ordering a change.

In Cuttridge v. San Francisco N. & C. R. Co. Case No. 751, Decision No. 2223, March 13, 1915, the California Railroad Commission held that it is unreasonable to require commutation tickets to be used on limited trains where the service on other trains is adequate for such travel.

In the following cases formal orders were made upon applications for permit to grant service at free or reduced rates:

The Maine Public Utilities Commission authorized the granting of service free of charge or at reduced rates for the following purposes, under § 32, of chapter 129, Public Laws of Maine 1913, permitting a utility to grant its services free or at reduced rates for charitable and benevolent purposes:

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—transportation of officers, inmates, students, children, and individuals of various named charitable and benevolent organizations, In Re Cumberland County Power & Light Co. Feb. 26, 1915; In Re Boston & M. R. Co. March 10, 1915; In Re Bangor & A. R. Co. March 19, 1915; In Re Lewiston, A. & W. Street R. Co. April 7, 1915; In Re Maine C. R. Co. June 9, 1915; In Re Cumberland County Power & Light Co. R. R. No. 50, June 25, 1915; In Re Cumberland County Power & Light Co. R. R. No. 51, June 25, 1915; In Re Bangor R. & Electric Co. R. R. No. 56, July 1, 1915; In Re Lewiston, A. & W. Street R. Co. R. R. No. 56, July 6, 1915; In Re Grand Trunk R. System, March 17, 1915; and for additional cases, see note in P.U.R. 1915A, 618;

—free transportation for certain named nuns, In Re Bangor & A. R. Co. R. R. No. 49, June 22, 1915;

—free transportation and storage of excess baggage of a certain named blind man, In Re Maine C. R. Co. R. R. No. 87, Sept. 16, 1915;

—free transportation of household goods of a certain named poor person, In Re Bangor & A. R. Co. R. R. 84, Sept. 13, 1915;

—free water to certain named poor persons, In Re Kingfield Water Co. U-No. 42, June 30, 1915; In Re Kingfield Water Co. U-No. 60, Aug. 17, 1915;

—water at reduced rates to certain named charitable and benevolent organizations, in Re Biddleford & S. Water Co. April 7, 1915; In Re York Shore Water Co. U-No. 55, Aug. 12, 1915;

—telephone service at reduced rates to certain named charitable and benevolent organizations, In Re New England Teleph. & Teleg. Co. March 3, 1915; In Re New England Teleph. & Teleg. Co. U-No. 50, July 27, 1915; In Re New England Teleph. & Teleg. Co. U-No. 52, Aug. 9, 1915;

—reduced transportation rates to a charity bazaar, In Re Cumberland County Power & Light Co. R. R. No. 78, Aug. 31, 1915.

The Maine Public Utilities Commission authorized reduced or excursion rate transportation, under § 60 of chapter 129, Public Laws of Maine 1913, for the following purposes;

—fairs, In Re Boston & M. R. Co. No. 747, June 10, 1915; In Re Maine C. R. Co. R. R. No. 70, Aug. 9, 1915; In Re Bangor & A. R. Co. R. R. No. 75, Aug. 23, 1915; In Re Aroostook Valley R. Co. R. R. No. 76, Aug. 26, 1915; In Re Maine C. R. Co. R. R. No. 83.2, Sept. 13, 1915; In Re Maine C. R. Co. R. R. No. 84.1, Sept. 14, 1915;

—Labor Day celebration, In Re Maine C. R. Co. R. R. No. 77, Aug. 15, 1915; In Re Maine C. R. Co. R. R. No. 77.1, Aug. 30, 1915; In Re Maine C. R. Co. R. R. No. 77.2, Aug. 30, 1915;

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—Fourth of July celebration, In Re Maine C. R. Co. R. R. No. 54, July 1, 1915;

—street celebration at Bangor, In Re Maine C. R. Co. R. R. No. 82.1, Sept. 10, 1915; In Re Bangor & A. R. Co. R. R. No. 83.1, Sept. 10, 1915;

—Sunday school and church picnic, In Re Auguata, G. & B. S. B. Co. U-No. 53, Aug. 9, 1915; In Re Atlantic Shore R. Co. No. 66, Aug. 2, 1915; In Re Coburn S. S. Co. U-No. 51, Aug. 5, 1915;

—convention, In Re Maine C. R. Co. R. R. No. 83, Sept. 13, 1915;

—political rally, In Re Maine C. R. Co. R. R. No. 69, Aug. 4, 1915;

—camp meeting, In Re Maine C. R. Co. R. R. No. 73, Aug. 16, 1915;

—ball game, In Re Maine C. R. Co. R. R. No. 78.1, Sept. 1, 1915, In Re Maine C. R. Co. R. R. No. 80.1, Sept. 4, 1915; In Re Augusta, G. & B. S. B. Co. U-No. 63, Aug. 30, 1915; In Re Bangor & A. R. Co. Jan. 15, 1915;

—Sunday excursions, In Re Maine C. R. Co. R. R. No. 82, Sept. 4, 1915;

—races, In Re Bangor & A. R. Co. R. R. No. 58, July 7, 1915;

—fraternal societies, In Re Maine C. R. Co. R. R. No. 67, Aug. 4, 1915;

—graduating class of state normal school, In Re Sandy River & R. L. R. Co. June 7, 1915;

—automobile parties, In Re Coburn S. B. Co. U-No. 64, Sept. 17, 1915; Coburn S. B. Co. U-No. 64.1, Sept. 18, 1915;

—extending rates because of postponement, In Re Maine C. R. Co. R. R. No. 71, Aug. 9, 1915; In Re Maine C. R. Co. R. R. No. 87.1, Sept. 16, 1915;

District of Columbia.—In Re Free Transportation on street railway and motor bus lines P. U. C. No. 31–23, March 10, 1915, order amending order No. 19, relating to free transportation.

Idaho.—In Re Oregon Short Line R. Co. Case No. 97, Order No. 210, March 5, 1915, order granting permission to extend return limits on legislative excursion tickets issued under authority G. P. O. Letter No. 138–1915, P. U. C. I. No. 168, to and including March 9, 1915.

Illinois.—State Public Utilities Commission v. Erie R. Co. No. 3018, Sept. 2, 1915, order permanently suspending local commutation tariff No. 8 carrying increase of rates.

Indiana.—In Re Anderson, No. 1374, March 12, 1915, authority granted to file supplemental schedule carrying a flat rate of $50 per year for water and for electrical current used in any charitable and benevolent hospital in the city.

In Re Lafayette Waterworks, No. 1573, June 17, 1915, order P.U.R.1915E.

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approving rate at 4 cents per thousand gallons of water for hospitals open to charity patients, effective July 1, 1914.

Michigan.—Certificates that certain persons are engaged in securing settlers for unimproved farm lands, and entitled to reduced railroad transportation, were granted in In Re Tillstrom, X-322, April 7, 1915; and In Re Blixt, X-322, Aug. 31, 1915.

Nebraska.—In Re Omaha & L. R. & Light Co. Application No. 2499, Sept. 16, 1915, authority granted to file amendment No. 1 to passenger tariff No. 1, providing for reduced rates for school purposes.

Rhode Island.—In Re Narraganset Electric Lighting Co. No. 170, Jan. 20, 1915, order approving granting of special rates to the city of Providence.

In Re Blackstone Valley Gas & Electric Co. No. 175, Feb. 10, 1915, order approving grant of special rates for street lighting for the town of North Smithfield and for the Pascoag fire district.

In Re Providence Teleph. Co. No. 185, March 24, 1915, order approving the granting free service to the Providence Chamber of Commerce.

In Re Providence Teleph. Co. No. 186, March 24, 1915, order approving the granting of free service to charitable purposes.

In Re Tiverton Electric Light Co. No. 184, March 24, 1915, order approving supplement No. 3 to tariff filed March 23, 1915, making a reduction of rates, effective April 1, 1915.

In Re New York, N. H. & H. R. Co. No. 197, April 28, 1915, order approving the granting of free transportation to a representative of the Bureau of Animal Industry of the United States.

In Re Narragansett Electric Lighting Co. No. 198, April 28, 1915, order approving the granting of a special rate of 5 cents for K.W.H. to the Blackstone Valley Gas & Electric Company.

MISSOURI PUBLIC SERVICE COMMISSION.

JOHN A. KNOTT et al.

v.

SOUTHWESTERN TELEGRAPH & TELEPHONE COMPANY.

[Case No. 583.]

Public utilities — Relation of stockholders — Ownership of property.

1. A telephone company is an entity separate and distinct from its stockholders, and franchise rights, physical property, and the like belong not to the stockholders as such, or to them as individuals, but to the corporation.

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Contracts — Benefit of third persons — Enforcement by telephone subscribers.

2. A contract entered into between telephone companies upon the transfer and sale of a telephone system, whereby stockholding subscribers of the vendor are to be given certain service, is enforceable by such subscribers, provided the contract is in harmony with the law and the public policy.

Discrimination — Rates — Telephones — Free service to stockholders.

3. A contract entered into between telephone companies upon the transfer and sale of a telephone system, whereby stockholding subscribers of the vendor are to be given service free, and other subscribers charged therefor, provides for a discrimination not permitted by the common law or the Missouri statute forbidding unreasonable discriminations, since such a classification is not just or fair.

Discrimination — Rates — Telephones — Estoppel by part performance of contract to render free service.

4. A telephone company in partly performing a contract providing for an unjust discrimination in requiring it to render service free to stockholders of the predecessor company, by giving service without charge for a certain time, is not thereby estopped from claiming that the contract is void and unenforceable by the stockholders.

Discrimination — Rates — Telephone — Presumptive authority to abrogate contract for free service.

5. It will be presumed that a telephone company which entered into a contract upon the sale of its system, whereby its stockholders are to be given free service, has authority to execute a subsequent contract abrogating such privilege, in the absence of a showing that it had no such authority.

Discrimination — Rates — Telephones — Abrogation of contracts for free service.

6. A contract executed upon the sale of a telephone system guarantying free service to stockholders of the vendor cannot be said to be abrogated by a subsequent contract withdrawing such privilege, since the prior contract, being unjustly discriminatory, had no legal inception.

Discrimination — Statute forbidding — Binding on Commission.

7. Under art. 4, § 1, and art. 6, § 1, of the Missouri Constitution, vesting the legislative power of the state in the general assembly and the judicial power in the courts, the Commission can neither repeal the Public Service Commission law forbidding discrimination in telephone rates, nor declare it unconstitutional.

Discrimination — Contract for free service — When not protected by statute.

8. A contract executed on the sale of a telephone system guarantying free service to stockholders of the vendor is not protected by ¶ 4, § 7, of the Missouri Public Service Commission law, which continues in force contracts existing on its effective date, since the statute applies only to valid contracts.

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Constitutional law — Public power — Impairment of obligation of contract — Free telephone service to stockholders.

9. The Missouri Public Service Commission law forbidding discrimination in telephone rates, enacted in pursuance of the constitutional provision that the public power of the state shall never be abridged to permit corporations to conduct their business so as to infringe the equal rights of individuals or the welfare of the state, is a proper exercise of the police power, and therefore does not unconstitutionally impair the obligation of a contract executed on the sale of a telephone system guarantying free service to stockholders of the vendor.

[July 20, 1915.]

COMPLAINT to compel telephone service without payment of established rates under a contract executed on the sale of a telephone system guarantying free service to stockholders of the vendor; dismissed.

Appearances: Hays, Heather, & Henwood for complainants; A. H. Bolte, E. H. Painter, and Mahan, Smith, & Mahan for defendant.

I. Statement of Case and Issues Outlined.

McQuillin, Commissioner: The three complainants, John A. Knott, B. E. Hixson, and Joseph O'Hearn, ask that the defendant be ordered by this Commission to furnish each of them telephone service to a named date, April 15, 1921, without payment of the regular established rates, because of the existence of conditions arising by virtue of certain contracts and transactions alleged to have been superinduced pursuant thereto (hereinafter specified and which contracts and transactions are admitted), as follows:

On May 14, 1902, the Miller Township & Hannibal Telephone Company, a corporation of Missouri, and the Equitable Construction Company, a corporation of Illinois, entered into a contract (exhibit "A") by which the former corporation agreed to transfer and assign to the latter corporation (1) all franchises and rights acquired and held by the first corporation under an ordinance of Hannibal, approved April 15, 1901, which granted to the first corporation certain franchises to build and operate in Hannibal a telephone exchange for a period of twenty years; (2) all of its lines, poles, and other line equipments at that date constructed and existing in Hannibal;

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and (3) all of its subscription lists of 350 patrons which had been taken by it for its contemplated telephone exchange. The contract recited that said subscribers were in Hannibal, and that "such assignment shall transfer all rights and equities against said subscribers, but subject to all liabilities and rights in their favor, which said second party (Equitable Construction Company) hereby assumes and agrees to carry out and fulfil."

The contract also recites "that said first party (Miller Township & Hannibal Telephone Company) will secure from the city of Hannibal proper amendments to said franchise ordinance extending the period of time covered thereby, raising the maximum charges authorized thereby for telephone service to $2.50 per month instead of $2 per month, and the privilege of putting in an underground system for such part of said exchange as said second party may elect."

The contract further provided "that said second party or its assigns will, at the corporate limits of said city, connect sufficient lines to its central office with the lines of said first party in such manner as to afford, and thereafter during said franchise period will afford, to all telephones, not exceeding sixty-five, on said first party's lines, the full and free use and benefit of said city exchange. All telephones on lines of said first party in excess of sixty-five shall have the like connection and full service, but at a charge of 20 cents per month each to be paid said second party. Persons now having phone connection with said first party's lines within the city of Hannibal, not, however, exceeding four in number, shall have the continued right of such connection in such manner as will afford them, free of charge, the same privileges and service as is above secured to others on said first party's lines, said last named four to be included in said first named 65."

The contract further provided that there should be no assignment of franchise by said second corporation or its assigns "without adequate provisions for fully carrying out by all assigns all the foregoing agreements by said second party."

On June 21, 1911, an agreement (exhibit "B") was entered into between the Miller Township & Hannibal Telephone Company, a Missouri corporation as first party, and the Bluff City Telephone Company, a Missouri corporation, as second party, by

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which both parties recognized, except as modified, the contract as above set out as binding upon each of them.

The second clause of said contract recites:

"It is agreed that second party has and will at the corporate limits of the city of Hannibal connect sufficient lines to its central office with all the lines of the first party in such manner as to afford and thereafter to afford to all telephones not exceeding 65 in number, on said first party's lines, the full and free use and benefit of the city exchange maintained by second party. All telephones on the lines of said first party in excess of the aforesaid 65 shall have the like connection and full service, but at a charge of 20 cents per month for each phone to be paid said second party. Persons now having phone connections with said first party's lines within the said city of Hannibal, not, however, exceeding 4 in number, shall have the continued right of such connection in such manner as will afford them free of charge the same privilege and service as is above secured to others on said first party's lines, said last-named 4 to be included in said first-named 65, but it is expressly agreed that the use of all phones on all lines of said first party shall be personal to the parties having such phones or members of their families; all use thereof by others shall be charged for at regular toll rates."

It is admitted that the 4 persons mentioned in the contracts (exhibits "A" and "B") were the three complainants herein and F. W. O'Brien, now deceased.

On July 1, 1912, the Bell Telephone Company of Missouri, party of the first part, entered into a contract (exhibit "C") with the Miller Township & Hannibal Telephone Company, party of the second part, which contains among others the following provisions:

"Clause 2. It is understood and agreed that the party of the first part will meet the lines of the party of the second part at the city limits of Hannibal, Missouri, and switch the present number of subscribers of the second party at Hannibal, Missouri, for thirty-one and 50-100 dollars ($31.50) per month; it being further agreed and understood that for any additional subscriber added by the second party taking the Hannibal, Missouri, service from and after date hereof, the party of the second part

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agrees to pay first party the sum of thirty-five cents (35c) per month per subscriber, and for reduction in present number of such subscribers by the second party they shall pay thirty-five cents (35c) per month less to the first party."

. . . . . .

"Clause 8. The date on which this contract takes effect all sublicense contracts and traffic agreements entered into between the parties hereto and all amendments and supplemental contracts thereto for the territory covered by this contract shall be and become null and void."

The "territory" mentioned in clause 8, is that covered by contracts exhibits "A" and "B," above.

When the contract, exhibit "A," was entered into the Miller Township & Hannibal Telephone Company had lines and poles in Miller township and lines running into Hannibal with poles, and were furnishing service to the four persons named. The four persons named were subscribers to the stock of said company, each having paid $40, and they claim, in return for their investment, they were furnished the above telephone service without further charge.

The switch board of the Miller Township & Hannibal Telephone Company was located from the time of its organization to the time of the execution of contract exhibit "A" on the first floor of the Journal Building, in Hannibal, which was the office of John A. Knott, one of the complainants herein. The complainants accepted the terms of contract exhibit "A," and obtained the service, without charge, and continued to receive such service uninterruptedly to the present time; and this is also true of the balance of the 65 subscribers mentioned in that contract. The present defendant is the successor of the corporations contracting with the Miller Township & Hannibal Telephone Company, mentioned above.

On September 7, 1914, defendant notified the complainants that after October 1, 1914, the free service would cease and they would be required after that date to pay the usual charge. On the filing of an informal complaint, upon request of this Commission, dated September, 1914, complainants continued to receive telephone service as theretofore, without charge, and are now obtaining same.

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After the execution of contract exhibit "A," the poles and lines of the Miller Township & Hannibal Telephone Company in Hannibal were removed, and thereafter service was furnished to complainants over the Hannibal lines of the Equitable Construction Company, and its successors, and at present over the Hannibal lines of the defendant from its central office in Hannibal.

The Miller Township & Hannibal Telephone Company is now operating, and has operated since 1902, the telephone exchange outside of Hannibal, and has connection with the defendant's exchange at the city limits, and defendant is furnishing telephone service to the subscribers and renters of the Miller Township & Hannibal Telephone Company; however, defendant claims that this is solely by virtue of the contract, exhibit "C," above mentioned, and not in accordance with the terms of prior contracts, exhibits "A" and "B".

The Miller Company has at present 101 renters, or 101 users of the phone, in excess of the 65 mentioned in the contract; that is, in all 166 stations, and is paying on 101, that is, $35.35 a month. This payment is made by virtue of clause 2 of contract exhibit "C," above, which is fully considered herein.

It thus appears that under the contract (exhibit "A") the defendant, through its grantors, acquired, first, the franchise right of the Miller Township & Hannibal Telephone Company to do business in the city of Hannibal for twenty years from April 15, 1901; second, all poles, lines, and equipments located within said city; and, third, subscription lists and contracts with 350 patrons within the city.

And under the contract defendant assumed these obligations, first, to maintain and operate an exchange in Hannibal and carry out the 350 subscription contracts; and, second, to furnish the 65 stockholders of the Miller Township & Hannibal Telephone Company connection with and use of the exchange, the complainants being of that number, without charge, and for all phones in excess of 65 the Miller company was to pay 20 cents per month for each phone.

The case was heard before one of the Commissioners at Hannibal, May 13, 1915, at which time all the testimony was taken, and oral arguments were made by learned counsel for the respec-

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tive parties, and which appear in full in the record. Subsequently, able written briefs and arguments were presented by either side.

Positions of Respective Parties.

The position of the complainants is that the contract, exhibit "A," constituted a contract for the benefit of the 65 stockholders, including the three complainants, of the Miller Township & Hannibal Telephone Company, and that service to these 65 persons was rendered and received by them; that such contract was fully executed, and hence neither the parties who signed, nor their successors or assigns, could do anything to abrogate it without consent of those for whose benefit it was made; that since the Equitable Construction Company and its successors have performed the contract, that is, supplied the service, the defendant is now estopped from claiming that the contract was not valid and binding when made, and hence clause 8 of the contract, exhibit "C," cannot and does not abrogate the first contract, exhibit "A." (It appears that the defendant did not construe clause 8 of the contract, exhibit "C," as relieving it of the obligation to furnish the service to the three complainants free; that is, from July 1, 1912, the date of the contract, until September 7, 1914, the date defendant gave notice that the complainants would be required after October 1st to pay the usual charge, because such service was furnished free as theretofore.)

Moreover, complainants contend that as the contract was recognized as valid when made and the rendition of service and acceptance thereof followed, any law subsequently enacted tending to render such contract void or inoperative cannot be applied to such contract, since such application would impair its obligation. In other phrase, the rights acquired by complainants under the contract, exhibit "A," are absolute and irrevocable during the life of the contract, which was to run until April 15, 1921, and could not thereafter be destroyed or impaired, except by the complainants themselves, not even by the Miller Township & Hannibal Telephone Company, nor by the Equitable Construction Company, or its successors or assigns; nor had the legislature power to abrogate any contract relating to service and rates, whether discriminatory or not, because such action would

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constitute an impairment of the obligation of the contract, within the meaning of the Federal and state Constitutions.

On the other hand, defendant's position is, first, that the original contract, exhibit "A," is void because against public policy, in that it provides for unjust discrimination, and is not now binding on defendant in so far as it requires the furnishing of free service to complainants; and, second, if it ever was valid and gave the right of free service to complainants, it was legally abrogated by the contract, exhibit "C," and also by the Public Service Commission law forbidding unjust discrimination touching telephone rates.

II. Validity and Enforceability by Complainants of Contract Exhibit "A."

[1] *1. Nature of Contract as It Relates to Complainants.*— It appears that the learned counsel of complainants fail to distinguish between the Miller company, a corporation, and the stockholders thereof. It is elementary that in legal conception a corporation is an entity or artificial personality separate and distinct from its members or stockholders. The franchise rights and physical property in Hannibal and subscription lists of prospective Hannibal patrons sought to be transferred belonged not to the stockholders as such, or to them as individuals, but to the legal entity known as the Miller Township & Hannibal Telephone Company. The sum of $40 which each of the complainants paid to the corporation as subscribers belonged after it was paid, not to them, but to the corporation. The complainants were stockholders to the extent of $40 each, and as such stockholders were entitled to receive service from the company, and as they claim free of charge, unless the corporation should not collect enough to defray its operating expenses, and in such case each would be required to pay his *pro rata* of such deficit. According to the evidence no additional sum has ever been paid to the company by any of the stockholders and subscribers.

[2] The claim is made that the contract was executed not for the benefit of the Miller company, but for the benefit of its then 65 stockholders and subscribers, and, therefore, that they may enforce it against the defendant and compel the furnishing of

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the free service until April 15, 1921, the date of the expiration of the Miller company's Hannibal franchise.

That a contract between two parties upon a valid consideration may be enforced by a third party, when entered into for his benefit, is well-settled law in this state. This is so, though such third party is not named in the contract, and though he is not privy to the consideration. Rogers v. Gosnell, 58 Mo. 590; State ex rel. St. Louis v. Laclede Gaslight Co. 102 Mo. 482, 22 Am. St. Rep. 789, 14 S. W. 974, 15 S. W. 383; Ellis v. Harrison, 104 Mo. 276, 16 S. W. 198, and cases cited. It is sufficient, in order to create the necessary privity, that the promisee owe to the party to be benefited some obligation or duty, legal or equitable, which would give him a just claim. St. Louis use of Glencoe Lime & Cement Co. v. Von Phul, 133 Mo. 561, 565, 54 Am. St. Rep. 695, 34 S. W. 843; St. Louis Public Schools v. Woods, 77 Mo. 196; St. Louis v. O'Neil Lumber Co. 114 Mo. 74, 21 S. W. 484; Snider v. Adams Exp. Co. 77 Mo. 523; Ellis v. Harrison, 104 Mo. 277, 16 S. W. 198; State ex rel. St. Louis v. Laclede Gaslight Co. 102 Mo. 472, 22 Am. St. Rep. 789, 14 S. W. 974, 15 S. W. 383; Schuster v. Kansas City, C. B. & St. J. R. Co. 60 Mo. 290; St. Louis v. Keane, 27 Mo. App. 642; Casey v. Gunn, 29 Mo. App. 14; Kein v. School Dist. 42 Mo. App. 462; St. Louis v. O'Neil Lumber Co. 42 Mo. App. 586; Hatch v. Hanson, 46 Mo. App. 323; Luthy v. Woods, 6 Mo. App. 70.

Thus the obligation of bonds given by contractors for public work may be of a dual nature, first, to protect the public; and, second, to protect materialmen who furnish material and laborers who furnish labor for such work. In such case, although the latter are not parties to the contract, the bond may protect them. They may sue on such bond, since in the view of the law the public owes some duty, legal or equitable, or some moral obligation to them. Kansas City ex rel. Diamond Brick & Tile Co. v. Schroeder, 196 Mo. 281, 301–305, 93 S. W. 405; Devers v. Howard, 144 Mo. 671, 680, 46 S. W. 625; St. Louis ex rel. Glencoe Lime & Cement Co. v. Von Phul, 133 Mo. 561, 54 Am. St. Rep. 695, 34 S. W. 843.

The Miller company owed to its stockholders and subscribers the duty to provide telephone service, and having ample power to contract (§§ 3329, 3338, Rev. Stat. [Mo.] 1909), it was

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competent therefore for it to enter into a contract, in harmony with the then existing law and sound public policy, for their benefit which could be enforced by them.

[3] *2. Is the Contract against Public Policy because Discriminatory?*—The law has always recognized a distinction between public and private service respecting charges. Partiality or an unjust or unreasonable charge is permissible in the latter, but not in the former. The statement, one is a public service company, *ex vi termini* imports a duty to the public, and a corresponding legal right in the public; a right common to all. St. Louis, A. & T. H. R. Co. v. Hill, 14 Ill. App. 579, 581.

There are many expressions in earlier judicial decisions condemning unjust discrimination on the part of public service companies, as against sound public policy. Some of these go to the extent of asserting that, independent of statutory provision, unjust discriminations respecting rates and charges are in violation of public duty. Cook v. Chicago, R. I. & P. R. Co. 81 Iowa, 551, 9 L.R.A. 764, 3 Inters. Com. Rep. 383, 25 Am. St. Rep. 512, 46 N. W. 1080; Atchison, T. & S. F. R. Co. v. Denver & N. O. R. Co. 110 U. S. 667, 674, 28 L. ed. 291, 294, 4 Sup. Ct. Rep. 185; Tift v. Southern R. Co. 123 Fed. 789; Annotation to Louisville, E. & St. L. Consol. R. Co. v. Wilson, 18 L.R.A. 105; Hutchinson, Car. § 243. Some declare that the common law requires that the charges must be equal to all for the same service under like circumstances. St. Louis A. & T. H. R. Co. v. Hill, 14 Ill. App. 579, 585.

A telephone company "must be equal in its dealings with all." Missouri ex rel. Baltimore & O. Teleg. Co. v. Bell Teleph. Co. 23 Fed. 539, 541. A learned text writer declares that "the duty owed to all alike involves obligations to treat all alike," and that "the common law to-day forbids all discrimination between two applicants who ask the same service." 2 Wyman, Public Service Corp. §§ 1290, 1292.

As aptly put in a leading case: "The law will not and cannot tolerate discrimination in the charges of these quasi public corporations. There must be equality of rights to all and special privileges to none." Griffin v. Goldsboro Water Co. 122 N. C. 206, 41 L.R.A. 240, 30 S. E. 319.

"A person having a public duty to discharge is undoubtedly

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bound to exercise such office for the equal benefit of all." Messenger v. Pennsylvania R. Co. 36 N. J. L. 407, 13 Am. Rep. 457, 37 N. J. L. 531, 18 Am. Rep. 754.

The numerous cases on this subject all tend to establish the same general principle, that those engaged in serving the public cannot make unreasonable and unjust discriminations between their patrons. "The common law upon the subject is founded on public policy, which requires one engaged in a public calling to charge a reasonable and uniform price to all persons for the same services rendered under the same circumstances." New York Teleph. Co. v. Siegel-Cooper Co. 202 N. Y. 502, 36 L.R.A. (N.S.) 560, 564, 96 N. E. 109; Killmer v. New York C. & H. R. R. Co. 100 N. Y. 395, 53 Am. Rep. 194, 3 N. E. 293; Lough v. Outerbridge, 143 N. Y. 271, 25 L.R.A. 674, 42 Am. St. Rep. 712, 38 N. E. 292.

As a telephone company is a common carrier of news and intelligence, it is impressed with the obligation of furnishing its service to each patron at the same price it makes to every other patron for the same or substantially the same or similar service. Nebraska Teleph. Co. v. State, 55 Neb. 627, 45 L.R.A. 113, 76 N. W. 171.

The Missouri supreme court has declared that "a public telephone company is a public service corporation, and as such must treat the members of the general public alike." Home Teleph. Co. v. Sarcoxie Light & Teleph. Co. 236 Mo. 114, 129, 36 L.R.A.(N.S.) 124, 139 S. W. 108.

In accordance with the doctrine of the common law designed to promote sound public policy, and aside from statutory enactment, the acceptance by the Equitable Construction Company of its franchise to furnish telephone service to the public carried with it the duty of supplying all its patrons without unjust discrimination. Likewise, the Miller Township & Hannibal Telephone Company was under the same legal obligation. All patrons of the same class of both companies were entitled to the same service on equal terms. Mooreland Rural Teleph. Co. v. Mouch, 48 Ind. App. 521, 96 N. E. 193.

Since the passage of the Missouri law forbidding inequality of service and charges on the part of public utility companies, this Commission has frequently condemned unjust discrimina-

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tion in whatever form practised. Berry v. Caruthersville Ice & Light Co. 2 Mo. P. S. C. R. 12; Mexico v. Mexico Power Co. 2 Mo. P. S. C. R. 177, 187; Weaver v. Kirksville Light, Power & Ice Co. 2 Mo. P. S. C. R. 225. Service to patrons of the same class must be measured by the same rate. Re Joplin Waterworks Co. 2 Mo. P. S. C. R. 235; Meek v. Consumers' Electric Light & P. Co. 2 Mo. P. S. C. R. 122, 144. No unjust discrimination of any character will be countenanced, *e. g.*, a method of discount which may result in equality of charges. Commercial Club v. Missouri Public Utilities Co. 2 Mo. P. S. C. R. 311, 353, 354. This Commission has ruled that it is unjust discrimination, and hence in violation of § 87, ¶ 2, of the Public Service Commission law, for a mutual telephone company to exact a different charge from its stockholders than it does from nonstockholders for the same service. Crane Teleph. Co. v. Barry County Mut. Teleph. Co. 1 Mo. P. S. C. R. 127.

This Commission has also ruled that the furnishing of electricity free to the stockholders of an electric company, or to any other consumer, constitutes unjust discrimination. Meek v. Consumers' Electric Light & P. Co. supra; § 68, P. S. C. L. A special rate to stockholders is unlawful. "Stockholders should benefit only in the way of dividends, and a lower rate to stockholders is unjustly discriminatory." Weaver v. Kirksville Light, Power & Ice Co. 1 Mo. P. S. C. R. 564, 586. Compare Re Ettrick Teleph. Co. P.U.R.1915D, 695; Re Dorsey Teleph. Co. P.U.R.1915D, 694. Furnishing service at a lower rate to physicians under municipal ordinances is unjust discrimination. Butler v. Doniphan Teleph. Co. 2 Mo. P. S. C. R. 81, 82. The supplying of free telephone service to the municipal authorities and the local public schools in consideration of the use of the streets and alleys is discrimination, where not so provided in the franchise. Simms v. Columbia Teleph. Co. 2 Mo. P. S. C. R. 256, 286.

In view of the wise principles announced in the foregoing decisions, and the established law on this subject as stated elsewhere by the writer (4 McQuillin, Mun. Corp. § 1697, and numerous cases in notes), our conclusion on this phase of this case is that the contract exhibit "A" is unquestionably void because unjustly discriminatory, under the well-settled rule of

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the common law at the date the contract was made, as well as under the Missouri statute forbidding unreasonable discriminations, which is merely an affirmance of the common-law rule (Cumberland Teleph. & Teleg. Co. v. Kelly, 87 C. C. A. 268, 160 Fed. 316, 15 Ann. Cas. 1210), unless it should distinctly appear that the classification therein is just and fair.

3. Reasonableness of Classification—Stockholders and Renters as Classes.—Complainants contend that the 65 subscribers, including the complainants, should not be regarded as a favored class within the meaning of unreasonable or unjust discrimination as used in the law. The claim is made that the free service applied to all of a class, namely, the 65 subscribers, at the time of making the contract, exhibit "A," and that it operated equally upon all within this class, although 61 were located beyond the limits of Hannibal, and 4, including the three complainants, were residents of Hannibal. But under that contract, and also exhibit "B," users of telephones on the lines of the Miller company in excess of 65 were charged at the rate of 20 cents per month. These constituted a distinct class. Presumably they were not stockholders.

From the evidence it appears that at present the Miller company has 166 subscribers and 166 stations, that is, 101 users of the phone in excess of the 65 mentioned in the contracts exhibits "A" and "B." It appears from clause 2 of the contract, exhibit "C," and the evidence that the users of the Miller company phones at present are divided into two classes, namely, the original 65 and the 101 who became users thereafter. Under this clause the Miller company pays to the defendant the sum of $31.50 for service to the subscribers as they existed at the date of the contract, July 1, 1912, and these, it seems, were the original 65, less the 4 who resided in Hannibal when the contract, exhibit "A," was entered into, thus reducing them to 61, all of whom reside beyond the corporate limits of Hannibal; and 35 cents per month for each subscriber in excess of 65, and 35 cents per month less for each subscriber less than 65. From the evidence it is shown that at present the Miller company in paying for each subscriber the sum of 35 cents to the defendant, or $35.35 in the aggregate, based upon 101 renters in excess of the

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original 65. This would leave the difference between 166 and 101, making 65 subscribers from whom nothing is received by defendant, and therefore the inference is irresistible that the 101 subscribers pay this sum, and the original 61 (deducting the 4 residing in Hannibal when the contracts, exhibits "A" and "B," were made) receive their service free.

Accordingly, it appears that the original contract, exhibit "A," and also exhibit "B," put all of the stockholders and subscribers of the Miller company into one class and the renters into another class, and the contract exhibit "C" divides this class into distinct classes; namely, the 65 who receive free service and the 101 who pay 35 cents per month each. And in the later contract the three complainants were passed *sub silentio* without as much as a nod of recognition, thus placing them in a class by themselves. Finally, the members of the original class, composed of the stockholders and subscribers and the renters of the Miller company, find themselves segregated into three separate and distinct classes, without substantial basis or even a plausible reason for this arbitrary classification.

The service which the complainants are now receiving at Hannibal exchange is sold to the public at the present price:

Business Station ..... $36.00 per year, for 13 years, $468.00
Residence Station ..... $24.00 per year, for 13 years, $312.00

The service which they received during the greater part of the past thirteen years was on sale to the public at:

Business Station ..... $30.00 per year, for 13 years, $390.00
Residence Station ..... $18.00 per year, for 13 years, $234.00

In the original complaint filed in this case it is stated that defendant concedes that under its interpretation of the contract the complainants are now entitled to the service on the Hannibal exchange on the same terms and at the same rates, furnished under that contract to the other stockholders of the Hannibal & Miller Township company. That is to say, that these complainants might extend lines from their residences in Hannibal to the rural line where it enters the city from Miller township, and receive the service under the contract. This also is the substance of the evidence of Mr. Knott, one of the complainants, on this point in speaking of a conversation he had with defendant's

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Hannibal manager. Should the complainants so extend lines for this service, they would receive the service now selling in Hannibal according to rate schedule on file with the Commission at $4.20 per year, which is the rate offered rural subscribers furnishing their equipment up to the city limits, and the rate paid by the Miller company for the 101 renters to defendant under the contract exhibit "C."

The three complainants reside in Hannibal and receive the same telephone service as other urban resident patrons; the latter pay, but the complainants insist that they should receive it free. The defendant charges $3 per month for business phones, $2 for residence phones, and $1.50 for party line, as it appears from a schedule on file with this Commission, of which we will take judicial notice. It is also true that the original 61 suburban subscribers of the Miller company receive free service. as pointed out above, however, under different circumstances. They live in the country,—in the suburbs of Hannibal,—and the complainants reside within the city limits. Doubtless, complainants believe that if these 61 persons receive free service, they also should be favored in like manner, since they all belonged originally, essentially to the same class and still occupy the same relation, though residing in different localities and receiving service from different centers.

It is competent for the defendant to furnish service to 65, or any reasonable number of users of phones connected with the lines of the Miller company residing in the Hannibal suburbs for a specified sum, as here $31.50, and in addition a designated rate for each user in excess of that number, as here 35 cents per month, or to allow a deduction from the aggregate sum, as here 35 cents per month, for each phone less than the 65, or the reasonable number agreed upon. Clause 2 of the contract, exhibit "C," so reads, but according to the evidence it appears that it was not intended by the parties to the contract that any one of the 65 should pay anything for service, and that the amount to be paid by the Miller company to the defendant should be collected from the users who became users after the execution of the contract, exhibit "A." Precisely in this manner does the contract operate. The original 61 suburban subscribers and 4 more (but who they are does not appear) receive free service.

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It is certain that the three complainants are not of the favored class.

In view of this analysis and the real operation of the contract, the conclusion is unavoidable that the contract is a mere device, thinly disguised, calculated to mislead and evade the just purpose of the law forbidding discrimination and favoritism and requiring uniformity of charges for the same service under like or similar conditions.

True, all discriminations are not forbidden, but only unjust discriminations. Western U. Teleg. Co. v. Call Pub. Co. 181 U. S. 92, 45 L. ed. 765, 21 Sup. Ct. Rep. 561; Western U. Teleg. Co. v. Call Pub. Co. 44 Neb. 326, 27 L.R.A. 622, 48 Am. St. Rep. 729, 62 N. W. 506. For example, it is not an unjust discrimination to make to one patron a less rate than to another where there exists differences in conditions affecting the expense or difficulty of performing the service which fairly justifies a different rate. Williams v. Maysville Teleph. Co. 119 Ky. 33, 82 S. W. 995; St. Louis Brewing Asso. v. St. Louis, 140 Mo. 419, 37 S. W. 525, 41 S. W. 911. The general rule is that where the conditions and circumstances under which the service is rendered are essentially different, varying rates are justified. United States v. Chicago & N. W. R. Co. 62 C. C. A. 465, 127 Fed. 785; Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Commission, 162 U. S. 184, 40 L. ed. 935, 5 Inters. Com. Rep. 391, 16 Sup. Ct. Rep. 700; Interstate Commerce Commission v. Baltimore & O. R. Co. 145 U. S. 263, 36 L. ed. 699, 4 Inters. Com. Rep. 92, 12 Sup. Ct. Rep. 844; East Tennessee Teleph. Co. v. Harrodsburg, 135 Ky. 216, 122 S. W. 126.

So, there is not necessarily an unjust discrimination because different rates are charged in different parts of the municipality, and a higher rate may be charged for water furnished to summer cottages in an outlying district than is charged in the center of the city. Souther v. Gloucester, 187 Mass. 552, 69 L.R.A. 309, 73 N. E. 558. So the fact that a telephone company, under no duty to extend its lines outside of the municipal limits, deems it proper to make such extension to one or two persons, does not make its refusal to furnish service to another person

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outside the limits an unlawful discrimination. Younts v. Southwestern Teleg. & Teleph. Co. 192 Fed. 200, 207.

Other illustrations may be given: A lower rate to telephone patrons furnishing their own equipment is a reasonable classification, *e. g.*, an allowance of 50 cents per month to any patron who owns his own telephone receiver, transmitter and coil, and "keeps up his line to the main line" of the telephone company, and "builds his line" to the main line. Butler v. Doniphan Teleph. Co. 2 Mo. P. S. C. R. 81, 82.

Under the Public Service Commission law messages by telephone may be classified into day, night, repeated and unrepeated, commercial, press, government, and such other classes as are just and reasonable, and different rates may be charged for the different classes of messages. (Section 87, ¶ 3.)

In the absence of statutory authorization different rates may be charged for day and night messages, since the difference in the cost of service affords a sufficient basis for classification. Western U. Teleg. Co. v. Call Pub. Co. 44 Neb. 326, 27 L.R.A. 622, 48 Am. St. Rep. 729, 62 N. W. 506, second appeal, 58 Neb. 192, 78 N. W. 519, affirmed in 181 U. S. 92, 45 L. ed. 765, 21 Sup. Ct. Rep. 561. But exacting a higher rate from new subscribers than from old subscribers for the same service is unreasonable classification, and hence unlawful discrimination. Bradford v. Citizens' Teleph. Co. 161 Mich. 385, 137 Am. St. Rep. 513, 126 N. W. 444.

There may be a classificaion of business and residence phones; however, the fact that a patron uses his residence phone in his business is not sufficient to warrant applying the rate for business phones to him, in the absence of a showing that his use thereof is substantially different from that of other residence phones. Mooreland Rural Teleph. Co. v. Mouch, 48 Ind. App. 521, 96 N. E. 193.

So, a telephone company may not charge a telegraph company more for service than it exacts of other business concerns, simply because the telegraph company derives a larger pecuniary benefit from such service than do other patrons. This constitutes no reasonable basis for classification, and hence is unjust discrimination. Postal Teleg. Cable Co. v. Cumberland Teleph. & Teleg. Co. 177 Fed. 726.

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Discrimination in the interest of the public and which benefit the people generally are favored. Perhaps no rule can be formulated with sufficient flexibility to apply to every case that may arise. In one case it was said that "it is only when the discrimination inures to the undue advantage of one man, in consequence of some injustice inflicted on another, that the law intervenes for the protection of the latter." Hays v. Pennsylvania Co. (C. C.) 12 Fed. 309, 311; United States v. Chicago & N. W. R. Co. 62 C. C. A. 465, 470, 127 Fed. 785, 790. Thus the furnishing of gas to a city at a cheaper rate than to general customers is not an unreasonable discrimination, since this is in the interest of the public. Willcox v. Consolidated Gas Co. 212 U. S. 19, 53 L. ed. 382, 48 L.R.A.(N.S.) 1134, 29 Sup. Ct. Rep. 192, 15 Ann. Cas. 1034. Compare Public Service Electric Co. v. Public Utility Comrs. — N. J. L. —, P.U.R.1915C, 229, 93 Atl. 707.

Discriminations in favor of the public at large are not opposed to public policy, because they benefit the people generally by relieving them of part of the burdens, and such discrimination cannot be held illegal in the absence of legislation upon the subject. 4 McQuillin, Mun. Corp. § 1697, p. 3594; Re New York Teleph. Co. P.U.R.1915D, 287. Thus the furnishing of telephone service free to municipal buildings does not constitute an unjust discrimination. Superior v. Douglass County Teleph. Co. 141 Wis. 363, 122 N. W. 1023; Re Abingdon Home Teleph. Co. P.U.R.1915C, 345.

The case of New York Teleph. Co. v. Siegel-Cooper Co. 202 N. Y. 502, 36 L.R.A.(N.S.) 560, 96 N. E. 109, cited by the learned counsel of complainants to sustain the contention of reasonable classification, announces principles at variance with their position. In that case it was held that a telephone company, with an exclusive right to use the streets of the city of New York in order to carry on its business, may make a discount of 25 per cent from its usual charges for telephone service, in favor of the city itself, regularly incorporated charitable institutions, and regularly ordained clergymen, without entitling all its other patrons to a like discount for service of the same kind.

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The discount was based solely upon the character and description of the patrons using the service, first, to the city, along whose streets the company's wires were stretched, and which has large powers of control and regulation over its property, as a contribution to the expense and cost of government; second, to the charitable institutions and clergymen, an an exercise of charity and benevolence on the part of the company to worthy and deserving patrons for services rendered of special benefit to the community as a whole, in accordance with a custom of long standing, under which they have received gratuitous contributions from members of the general public.

The decision rests on the principles of the common law, as the contrast was made prior to the enactment of the New York statute relating to the subject. The case was presented on an agreed statement of facts. It was not stated as a fact that the discrimination was unreasonable or unjust; but it was insisted that as the company was engaged in a public calling, it was subject to a rigid rule requiring it to charge all patrons receiving the same service at the same rate, with no right of discrimination on account of the character of its customers, as distinguished from the character of its service. The sole question presented for decision was unlawful discrimination.

The principle of the decision appears from the following language of the court:

"Whether a discrimination is unreasonable or not is usually a question of fact; but the parties in this case have made no stipulation on that subject in their statement of the facts, and we cannot find a fact, even if we think that the facts as agreed upon would permit the inference. The defense, therefore, must fail, regardless of any other consideration, unless we hold that one or more of the discriminations in question was unreasonable as matter of law.

"No discrimination was made by the plaintiff in favor of any class of customers, except the three expressly named; and for time out of mind discounts have been allowed by common carriers and others conducting a business in which the public has an interest for services rendered to clergymen and institutions of charity, because they are engaged in the work of benefiting mankind, and are supported by contributions from the public.

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For these reasons, their property is exempt from taxation wholly or in part. They carry on no business, do not compete with others, and are not engaged in making money. It is the general belief that they render full value for what they receive by caring for the sick and wounded or helping all to lead orderly lines. . . .

. "Morever, the law against unreasonable discrimination rests on public policy. It is forbidden because it is opposed to the interest of the public, which requires that all should be treated alike under like circumstances. Discriminations, however, in favor of the public, are not opposed to public policy, because they benefit the people generally by relieving them of part of their burdens. In the absence of legislation upon the subject, such discriminations cannot be held illegal, as matter of law, without overturning the foundations upon which the rule itself is built. . . .

"We think that according to the common law, as in force prior to recent legislation on the subject, the discriminations in question were neither unreasonable nor unjust as matter of law, because they were in favor of the public, and because the favored classes were in a different situation and were surrounded by different circumstances from those affecting the general patrons of the plaintiff."

Since it distinctly appears from this consideration that the classification attempted is not based on sound reason, it follows, as the night the day, that contract exhibit "A" in so far as it sought to furnish free service to the 65 stockholders was and is void, and hence is unenforceable by the three complainants against the defendant.

[4] *4. Estoppel.*—The fact that the service was given without charge by defendant and its predecessors to complainants affords no ground whatever for the application of the doctrine of estoppel against defendant, and thus precluding it from claiming that the contract was and is void and unenforceable by complainants. Estoppel may be invoked only to prevent injustice, and not merely to stop the mouth from pleading and uttering the truth. Bispham, Eq. § 280.

The authoritative and ancient express prohibition, "Thou shalt not" has been incorporated into our law in order to correct

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unjust discriminatory practices on the part of public service companies; and the courts and commissions should, without variableness or shadow of turning, enforce the equality of service and charges sought to be undeviatingly maintained for the benefit of all patrons alike by unhesitatingly characterizing such abuses as public wrongs calculated to destroy utterly the faithfulness and integrity of this service. The rule is one of sound public policy, which, without regard to intention, or incidental pecuniary loss or advantage to the individual, inexorably reaches all contracts which contravene the purposes of the law. It is almost needless to say that a contract, as exhibit "A," so repugnant to law and so inimical to the public interest, is utterly void, and there is no power, whether called estoppel or any other name, that can breathe life into such a dead thing.

III. Does Contract, Exhibit "C," Abrogate Provision as to Free Service?

[5, 6] It is a self-evident proposition that if complainants had any right to free service under the original contract, exhibit "A," this right was subject to cancelation or abrogation by subsequent contract. Is such contract exhibit "C?"

Complainants insist that contract exhibit "C" does not abrogate the prior contracts guarantying free service, because it was made without their knowledge, consent, or acceptance. Suffice it to say on this point that, in the absence of a showing that the Miller Township & Hannibal Telephone Company was not authorized to execute the contract, the presumption is that it had such authority.

Moreover, in accordance with the conclusions stated in prior paragraphs herein, as that part of contract exhibit "A," seeking to guarantee free service to complainants, never had any legal or equitable basis upon which to rest, clause 8 of contract exhibit "C," assuming to withdraw this favor, is as useless to accomplish this object as though it had never been written, whatever else it may indicate touching the purpose of the defendant. As nothing was given, nothing could be taken away.

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IV. Change of Law by Legislature.

[7] *1. Its Nature and Binding Effect on Commission.*—The Public Service Commission law provides in express terms that no telephone corporation shall, directly or indirectly or by any special rate, rebate, drawback, or other device or method charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered with respect to communication by telephone or in connection therewith, except as authorized by this act, than it charges, demands, collects, or receives from any other person or corporation for doing a like and contemporaneous service with respect to communication by telephone under the same or substantially the same circumstances and conditions. (Section 87, ¶ 2.) That no telephone corporation shall make or give any undue or unreasonable preference or advantage to any person, corporation, or locality, or subject any particular person, corporation, or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. (Section 87, ¶ 3.) And that no telephone corporation shall directly or indirectly give any free or reduced service or any free pass or frank for transmission of messages by telephone, except to the persons and corporations specified in the law (§ 88, ¶ 3), and which do not include complainants or the stockholders of any telephone corporation.

This Commission must regard this law as valid. We have no power to set it aside, or declare it unconstitutional, or refuse to apply it in a proper case, even if just grounds for so doing should exist, which we do not believe exist in this case. Under our Constitution, article 4, § 1, vesting the legislative power of the state in the general assembly, and article 6, § 1, vesting the judicial power in the courts, this Commission can neither repeal the statute forbidding discrimination nor declare it unconstitutional. State ex rel. Missouri Southern R. R. Co. v. Public Service Commission, 259 Mo. 704, 168 S. W. 1156, 1164; Jackson County v. Kansas City, St. L. & C. R. Co. 1 Mo. P. S. C. R. 699, 702; Phelps v. St. Louis, I. M. & S. R. Co. 2 Mo. P. S. C. R. 15, 28, 29; Re Marysville Light & Water Co. P.U.R.1915D, 374.

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[8] *2. Service under Prior Contracts.*—Paragraph 4 of § 87 of the Public Service Commission law provides that nothing in the law shall be construed to prevent any telephone corporation from continuing to furnish the use of its lines, equipment, or service under any contract or contracts in force at the date the law takes effect, or upon the taking effect of any schedule or schedules of rates subsequently filed with the Commission, as the law requires (§ 88), at the rate or rates fixed in such contract or contracts; provided, however, that when any such contract or contracts are or become terminable by notice, the Commission shall have power, in its discretion, to direct by order that such contract or contracts shall be terminated by the telephone corporation party thereto, and thereupon such contract or contracts shall be terminated by such telephone corporation as and when directed by such order.

No argument is necessary to demonstrate that the contract or contracts mentioned in this law were intended to be valid and enforceable contracts under the law as it existed at the time of their execution. The legislators clearly did not mean that contracts inimical to the public interest or against sound public policy should be included.

Having reached the conclusion that the original contract. exhibit "A," was void, for the reasons above given, it follows that the provision of the law above quoted cannot be invoked by the complainants in order to obtain free telephone service in flagrant violation of the rule of the common law and of our present statute, which, in substance, is only an affirmation of this reasonable and salutary rule.

[9] *3. Impairing Obligation of Contract.*—Concerning the earnest contention of complainants that the Missouri statute forbidding discrimination, preferences, and all forms of inequality in rates for telephone service (as above set forth) cannot be applied in this case, because such application would be in direct violation of that provision of both the Federal (U. S. Const. art. I, § 10) and state (Mo. Const. 1875, art. II, § 15) Constitutions prohibiting the enactment of laws impairing the obligation of contracts, it may be suggested at the threshold of the discussion that it must first be made manifest that there was a valid contract capable of enforcement before it can be

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urged that subsequent changes in the law impair its obligation. New Orleans v. New Orleans Waterworks Co. 142 U. S. 79, 88, 35 L. ed. 943, 946, 12 Sup. Ct. Rep. 142. However, aside from this, we may proceed to consider whether the constitutional inhibition invoked is applicable to contracts of the nature here, even assuming the validity and enforceability of the contract, exhibit "A," by complainants.

In England from time immemorial and in this country from its first colonization, it has been a well-established principle in law that the legislative branch of the government is vested with power to regulate private property which is devoted to public use. Munn v. Illinois, 94 U. S. 113, 130, 24 L. ed. 77, 85; Spring Valley Waterworks v. Schottler, 110 U. S. 347, 28 L. ed. 173, 4 Sup. Ct. Rep. 48; Michigan C. R. Co. v. Michigan Railroad Commission, 236 U. S. 615, 59 L. ed. — P.U.R. 1915C, 263, 35 Sup. Ct. Rep. 422; Missouri ex rel. Baltimore & O. Teleg. Co. v. Bell Telephone Co. 23 Fed. 539, 541; Griffin v. Goldsboro Water Co. 122 N. C. 206, 41 L.R.A. 240, 30 S. E. 319; Pond, Public Utilities, § 191. This includes the power to regulate rates to be charged by a corporation intrusted with a franchise of a public utility character for service, subject, however, to the limitation that the return must admit of a fair profit on the investment in order that the exercise of the power may not amount to a taking of property for public use without due compensation. (Minnesota Rate Cases (Simpson v. Shepard) 230 U. S. 352, 433, 57 L. ed. 1511, 1555, 48 L.R.A.(N.S.) 1151, 33 Sup. Ct. Rep. 729; Public Service Commission Law § 93); and also the further limitation against the impairment of the obligation of contracts. 4 McQuillin, Mun. Corp. § 1734, p. 3701.

The power of regulation is within the sovereign power of the state that grants the franchise or that suffers it to be exercised within its borders, unless forbidden by the state Constitution. State ex rel. Garner v. Missouri & K. Teleph. Co. 189 Mo. 83, 100, 88 S. W. 41; Danville v. Danville Water Co. 180 Ill. 235, 54 N. E. 224; Bluefield Waterworks & Improv. Co. v. Bluefield, 69 W. Va. 1, 33 L.R.A.(N.S.) 759, 70 S. E. 772; Madison v. Madison Gas & Electric Co. 129 Wis. 249, 264, 8

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L.R.A.(N.S.) 529, 116 Am. St. Rep. 944, 108 N. W. 65, 9 Ann. Cas. 819.

The subject of the regulation of rates and charges of public service companies, as in this case a telephone company, being thus regarded in our legal system as essentially a governmental function, primarily within the exclusive jurisdiction of the state as the *parens patriæ* of all residing and being therein, may be exercised by such sovereign authority, either directly by the state legislative department, or the state may in due manner authorize it to be exercised by public functionaries legally created by the state, whether such functionaries assume the form and name of commissions or commissioners (State ex rel. Missouri Southern R. Co. v. Public Service Commission, 259 Mo. 704, 168 S. W. 1156; Saratoga Springs v. Saratoga Gas, E. L. & P. Co. 122 App. Div. 203, 107 N. Y. Supp. 341; State ex rel. Marshall v. Wyandotte County Gas Co. 88 Kan. 165, 127 Pac. 639, affirmed in 231 U. S. 622, 58 L. ed. 404, 34 Sup. Ct. Rep. 226; 4 McQuillin, Mun. Corp. § 1735), or cities, towns, or municipal corporations (State ex rel. Garner v. Missouri & K. Teleph. Co. 189 Mo. 83, 99, 100, 88 S. W. 41; St. Louis v. Bell Teleph. Co. 96 Mo. 623, 627, 628, 2 L.R.A. 278, 9 Am. St. Rep. 370, 10 S. W. 197; Home Teleph. & Teleg. Co. v. Los Angeles, 211 U. S. 265, 271, 53 L. ed. 176, 181, 29 Sup. Ct. Rep. 50; 4 McQuillin, Mun. Corp. § 1734). In the latter instance the Commission or public corporation acts in the exercise of the power simply as the agent of the state.

A city may, if the power has been expressly conferred, contract for a reasonable rate during a reasonable time in such manner as to bind the state (Vicksburg v. Vicksburg Waterworks Co. 206 U. S. 496, 508, 51 L. ed. 1155, 1160, 27 Sup. Ct. Rep. 762; Freeport Water Co. v. Freeport, 180 U. S. 587, 593, 45 L. ed. 679, 686, 21 Sup. Ct. Rep. 493) or the state may be bound where it has subsequently ratified the city's action in making the contract (Los Angeles v. Los Angeles City Water Co. 177 U. S. 558, 44 L. ed. 886, 20 Sup. Ct. Rep. 736; Minneapolis v. Minneapolis Street R. Co. 215 U. S. 417, 54 L. ed. 259, 30 Sup. Ct. Rep. 118). For the reason that the power as to rates is continuing in its nature, and that if it were contracted away a power of government would be

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extinguished *pro tanto,* the law favors its continuance in the legislature or its agents, and will construe all doubt in favor of their possessing it. Home Teleph. & Teleg. Co. v. Los Angeles, 211 U. S. 265, 273, 53 L. ed. 176, 182, 29 Sup. Ct. Rep. 50; Milwaukee Electric R. & Light Co. v. Railroad Commission, 153 Wis. 592, L.R.A.—, —, 142 N. W. 491, Ann. Cas. 1915A, 911; State ex rel. Webster v. Superior Ct. 67 Wash. 37, L.R.A. 1915C, 287, 120 Pac. 861, Ann. Cas. 1913D, 78; Dawson v. Dawson Teleph. Co. 137 Ga. 62, 72 S. E. 508. Hence, a city may fix a telephone rate and thereafter raise it without impairing the obligation of the contract. Home Teleph. & Teleg. Co. v. Los Angeles, 211 U. S. 265, 53 L. ed. 176, 29 Sup. Ct. Rep. 50. However, a city may so bind itself, where it has discretion, concerning the regulation of rates by contract with a public service company, so as to preclude the city from thereafter altering the rates so fixed during the life of the contract. Cleveland v. Cleveland City R. Co. 194 U. S. 517, 48 L. ed. 1102, 24 Sup. Ct. Rep. 756; Manitowoc v. Manitowoc & N. Traction Co. 145 Wis. 13, 140 Am. St. Rep. 1056, 129 N. W. 925.

In one case, an ordinance fixed the rates of a water company. Later, the state created a Public Service Commission, which permitted the water company to increase its rates. The city complained, contending that the act impaired the obligation of its contract with the water company. The court rejected this view, since it did not appear that the city was empowered, either expressly or by necessary implication, to bind the state. The mere adoption of the ordinance fixing the rate was not viewed as such an act as to bind the state in the premises. Benwood v. Public Service Commission, — W. Va. —, L.R.A. 1915C, 261, 83 S. E. 295.

In a case relating to interstate commerce, the Supreme Court of the United States held that the obligation of contracts between individuals in such case are not impaired by subsequent legislative restrictions, even though they are thereby nullified, for the parties will be presumed to have had such a possibility in mind. The power of the state to act in matters appertaining to its original jurisdiction is not hampered by contracts made in regard to such matters by individuals. The legislature may, in the exercise of its undoubted jurisdiction, subsequently render them

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invalid. Louisville & N. R. Co. v. Mottley, 219 U. S. 467, 55 L. ed. 297, 34 L.R.A.(N.S.) 671, 31 Sup. Ct. Rep. 265.

The rule that the obligation of a contract between a municipality and a public service corporation as to rates cannot be impaired by subsequent legislation by the municipality, does not apply to contracts between public service companies and individuals. Santa Ana Water Co. v. San Buenaventura, 56 Fed. 339. So contracts between a public service corporation and private consumers as to rates for the supply furnished are subject to modification by the municipality without impairing the obligation of contracts. Knoxville Water Co. v. Knoxville, 189 U. S. 434, 47 L. ed. 887, 23 Sup. Ct. Rep. 531, affirming 107 Tenn. 647, 61 L.R.A. 888, 64 S. W. 1075.

The law is firmly established that the Congress or a state legislature, within their respective jurisdictions, has power to regulate common carrier and other public service companies, and such power is not destroyed or limited because the regulation may to some extent affect the power to contract or even existing valid contracts.

"One whose rights, such as they are, are subject to state restriction cannot remove them from the power of the state by making a contract about them. The contract will carry with it the infirmity of the subject-matter." Hudson County Water Co. v. McCarter, 209 U. S. 349, 357, 52 L. ed. 828, 832, 28 Sup. Ct. Rep. 529, 531, 14 Ann. Cas. 560.

"If the shipper sees fit to make a contract covering a definite period for a rate in force at the time, he must be taken to have done so subject to the possible change of the published rate in the manner fixed by statute to which he must conform." Armour Packing Co. v. United States, 209 U. S. 56, 52 L. ed. 681, 28 Sup. Ct. Rep. 428.

In a leading case a railroad company contracted with a man and wife who suffered damage while traveling on the road, in consideration of their release of any claim therefor, to issue free passes to them during their respective lives. Subsequently by amendment of the interstate commerce act, it was made unlawful for interstate carriers to transport any person for a greater or less or different compensation than any other person, with certain exceptions. In sustaining the amendment the Su-

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preme Court of the United States held that it was in violation of the law for a carrier to issue interstate transportation in pursuance of a prior existing contract to do so as compensation for injuries received and, even though valid when made, such a contract cannot now be enforced against the carrier. Louisville & N. R. Co. v. Mottley, 219 U. S. 467, 55 L. ed. 297, 34 L.R.A. (N.S.) 671, 31 Sup. Ct. Rep. 265, followed in Re Southwest Missouri R. Co. 1 Mo. P. S. C. R. 46, 50; Public Service Electric Co. v. Public Utility Comrs. — N. J. L. —, P.U.R.1915C, 229, 93 Atl. 707.

In Union Dry Goods Co. v. Georgia Public Service Corp. 142 Ga. 841, L.R.A.—, —, 83 S. E. 946, a dry goods company entered into a contract with an electric company for supply of electricity for lighting at a named price for a period of five years. At this time there was neither statute nor rule of the Commission regulating rates for the period specified. After the contract had run more than a year (both parties complying therewith), on application the state Commission authorized an increase of rates to the electric company for the class of service covered by the contract. Concerning the effect of the order prescribing a higher rate as reasonable upon the lower rate stipulated in the contract, the court said that when the state Commission acted "the rate thus prescribed had the effect of overriding the contractual rate between the public service company and its patrons, and made anterior to the Commission's order."

Superior v. Douglas County Teleph. Co. 141 Wis. 363, 368, 122 N. W. 1023, relied on by complainants, is easily distinguishable from the principles announced in the above cases. In that case it was held that a contract between a city and a telephone company, whereby the company, in order to afford its patrons connection with the departments of the city government, agreed with the city to install and maintain telephones free of charge in such departments during the period that the company should operate a telephone system in the city (and such telephones were installed and put into operation), is not affected by subsequent state legislation forbidding discriminatory rates, but is protected by the constitutional provision against impairing the obligation of contracts.

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Replying to the contention that such contract was contrary to the common-law rule, that a quasi public corporation should afford the service it offers to every person on the same basis that it does to anyone under the same or similar circumstances, and that it was against sound public policy, the court said that public policy in this relation is that principle which maintains that a person cannot rightfully do or bind himself to do that which is inimical to the public good. "Discriminatory contracts between public utility corporations and their patrons which are held to be void as inimical to the public good are so held because unreasonable advantage is thereby given to one customer or a class over others, whereas, all have a moral and legal right to equality of treatment. In case of the contract being between a private corporation and the state or other public corporation, whatever advantage the particular customer has over general customers obviously inures to the benefit of the latter in the aggregate. In other words, in the ultimate there is no discrimination which is inimicable to the public good, and hence no violation of public policy. Such is the situation here. If we concede that the appellant [city] under the contract was a favored customer in that if the same advantages had been granted by contract to a private corporation, the agreement would have been unenforceable, still in the circumstances here the contract is enforceable because the advantage is to the public, instead of to any particular member thereof."

Moreover, in that case, the state law contained this express provision: "The furnishing by any public utility of any product or service at the rates and upon the terms and conditions provided for in any existing contract executed prior to . . . [date of passage of the law] shall not constitute a discrimination within the meaning specified."

It is thus manifest that the doctrine of this case is clearly distinguishable from the principles above stated, because, first, the advantage favored the public, and hence was not contrary to sound public policy; and, second, the law involved, in express terms, excepted the contract from its operation.

This Commission has ruled that it has power to regulate the rates and charges of a water company operating under a franchise granted by a city during the life of such franchise, not-

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withstanding the franchise constitutes a contract between the city and water company. Cole v. Ft. Scott & N. Light, Heat, Water & Power Co. 1 Mo. P. S. C. R. 130, 140, et. seq.

Unhampered by contract of corporations or individuals fixing unreasonable rates, or contracts permitting unjust discrimination, or contractual restrictions of any nature inimicable to the public interest, the Public Service Commission law is designed to invest ample power in this Commission, in harmony with the exceptions expressed and implied therein, to require all public utility companies operating in the state not only to serve the public at reasonable rates, but to require them also to serve the public efficiently and without discrimination. This is imperatively demanded by modern industrial conditions. 2 Wyman, Public Service Corp. §§ 1281, 1289, 1290. Clearly this cannot be accomplished if prior contracts between individuals and corporations fostering unjust discrimination are recognized as enforceable. By such recognition the just purpose of the law would be defeated.

Notwithstanding the contract, exhibit "A," may be regarded as valid and existing for the benefit of the 65 subscribers, including the three complainants herein, the right of the state to interfere whenever the public weal demanded was undoubted. In this view the contract may be regarded as remaining valid between the parties to it and for the benefit of the complainants until such time as the state saw fit to exercise its paramount authority by the enactment of the Public Service Commission law, and then its validity and operation ceased.

Furthermore, the fixing of rates being strictly a governmental function, the mere execution of the contract can in no sense be regarded as requiring the state to surrender its power in this respect. It is needless to say that the state never conferred authority upon the two telephone companies in the execution of the contract to exclude the state from exercising its just powers of regulations.

If the sovereign power of the state to regulate rates is considered as a branch of the police power (and this view is sometimes taken), by express mandate of our organic law its exercise "shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal

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rights of individuals, or the general well-being of the state." Mo. Const. 1875, art. XII. § 5.

Invoking this doctrine, it is obvious that the contract, exhibit "A," abridges the police power of the state in that it infringes the equal rights of individuals and militates against the well-being of the state.

Therefore, the law forbidding discrimination is a proper exercise of the state police power, and indeed, in view of the constitutional provision, the obligation rested upon the state to pass such law.

Our supreme court has said that the Public Service Commission act "is an elaborate law bottomed on the police power." State ex rel. Barker v. Kansas City Gas Co. 254 Mo. 515, 534, 535, 163 S. W. 854.

"It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the state from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power which in its various ramifications is known as the police power is an exercise of the sovereign right of the government to protect the lives, health, morals, comfort, and general welfare of the people, and is paramount to any rights under contract between individuals." Manigault v. Springs, 199 U. S. 473, 480, 50 L. ed. 274, 275, 26 Sup. Ct. Rep. 127, 130.

Wherefore, it follows that the complaint herein should be dismissed, and it is so ordered.

Commissioners Atkinson, Kennish, and Shaw concur; Commissioner Bean concurs in result.

OKLAHOMA CORPORATION COMMISSION.

IN RE CONSERVATION OF NATURAL GAS.

[Cause No. 2325; Order No. 937.]

Gas — Natural — Conservation rules.

Rules relative to the conservation of natural gas were adopted

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by the Oklahoma Commission, and made effective on and after September 1, 1915.

[August 16, 1915.]

CONSIDERATION of the necessity of consuming the supply of natural gas by preventing waste; conservation rules adopted.

Humphrey, Commissioner: On March 30, 1915, house bill No. 395, entitled "An Act to Conserve Natural Gas in the State of Oklahoma, to Prevent Waste thereof, Providing for the Equitable Taking and Purchase of Same, Conferring Authority on the Corporation Commission," etc., was approved. (Session Laws 1915, 398.)

The bill is in part as follows:

"A. (§ 1) That the production of natural gas in the state of Oklahoma, in such manner and under such conditions as to constitute waste shall be unlawful.

"B. (§ 2) That the term 'waste' as used herein, in addition to its ordinary meaning, shall include escape of natural gas in commercial quantities into the open air, the intentional drowning with water of a gas stratum capable of producing gas in commercial quantities, underground waste, and permitting of any natural gas well to wastefully burn and the wasteful utilization of such gas.

"C. (§ 8) That the Corporation Commission shall have authority to make regulations for the prevention of waste of natural gas, and for the protection of all natural gas, fresh water, and oil-bearing strata encountered in any well drilled for oil or natural gas, and to make such other rules and regulations, and to employ or appoint such agents, with the consent of the governor, as may be necessary to enforce this act.

"D. (§ 3)

"(a) That whenever natural gas in commercial quantities, or a gas-bearing stratum, known to contain natural gas in such quantity, is encountered in any well drilled for oil or gas in this state, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste, and all such strata shall be adequately protected from infiltrating waters.

"(b) Any unrestricted flow of natural gas in excess of 2,000,-

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000 cubic feet per twenty-four hours shall be considered a commercial quantity thereof.

"(c) Provided, that if in the opinion of the Corporation Commission, gas of a lesser quantity shall be of commercial value, said Commission shall have authority to require the conservation of said gas in accordance with the provisions of this act.

"(d) And provided, further, the gauge of the capacity of any gas well shall not be taken until such well has been allowed an open flow for the period of three days.

"E. (§ 4)

"(a) That whenever the full production from any common source of supply of natural gas in this state is in excess of the market demands, then any person, firm, or corporation having the right to drill into and produce gas from any such common source of supply may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm, or corporation bears to the total natural flow of such common source of supply having due regard to the acreage drained by each well, so as to prevent any such person, firm, or corporation securing any unfair proportion of the gas therefrom; provided, that the Corporation Commission may by proper order permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable.

"(b) The said Commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interests of the public, and all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.

"F. (§ 5)

"(a) That every person, firm, or corporation, now or hereafter engaged in the business of purchasing and selling natural gas in this state, shall be a common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines without discrimination in favor of one producer as against

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another, or in favor of any one source of supply as against another save as authorized by the Corporation Commission after due notice and hearing; but if any such person, firm, or corporation shall be unable to purchase all the gas so offered, then it shall purchase natural gas from each producer ratably.

"(b) It shall be unlawful for any such common purchaser to discriminate between like grades and pressures of natural gas, or in favor of its own production, or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion that such production bears to the total production available for marketing.

"(c) The Corporation Commission shall have authority to make regulations for the delivery, metering, and equitable purchasing and taking of all such gas, and shall have authority to relieve any such common purchaser, after due notice and hearing, from the duty of purchasing gas of an inferior quality or grade.

"G. (§ 9) Before any person, firm, or corporation shall have, possess, enjoy, or exercise the right of eminent domain, right of way, right to locate, maintain, construct, or operate pipe lines, fixtures, or equipments belonging thereto or used in connection therewith, for the carrying or transportation of natural gas, whether for hire or otherwise, or shall have the right to engage in the business of purchasing, piping, or transporting natural gas, as a public service, or otherwise, such person, firm, or corporation shall file in the office of the Corporation Commission a proper and explicit authorized acceptance of the provisions of this act.

"H. (§ 6)

"(a) That any person, firm, or corporation, or the attorney general on behalf of the state, may institute proceedings before the Corporation Commission, or apply for a hearing before said Commission, upon any question relating to the enforcement of this act.

"(b) Jurisdiction is hereby conferred upon said Commission to hear and determine the same; said Commission shall set a time and place when such hearing shall be had, and give reason-

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able notice thereof to all persons or classes interested therein by publication in some newspaper or newspapers having general circulation in the state, and shall in addition thereto cause notice to be served in writing upon any person, firm, or corporation complained against in the manner now provided by law for serving summons in civil actions.

"(c) In the exercise and enforcement of such jurisdiction said Commission is authorized to summon witnesses, make ancillary orders, and use such means and final process including inspection and punishment as for contempt, analogous to proceedings under its control over public service corporations as now provided by law."

The matter of the conservation of natural gas has for some time occupied the attention of the thinking public in various states, but no law so comprehensive as the act under consideration has come to our notice. No rules and regulations made by other Commissions such as are contemplated and authorized by the aforesaid bill have come under our observation, but we are advised that the Commissioner of Indian Affairs proposes to issue regulations for use in the operation of oil and gas mining leases covering Indian allotments held by citizens of the five civilized tribes.

Gas is frequently found in the same field where oil is found—sometimes in the same sand, at other times in different sands—but generally the two substances appear in such proximity that the finding of one usually leads to the discovery of the other and results in the production of both, which as a business pursuit is commonly referred to as oil and gas mining.

The operations incident to the discovery of either product are practically the same, but they differ very materially in the matter of utilization or sale and distribution and in the manner and means of conservation or preservation precedent to the actual utilization of the products. However, initial similarity is so far-reaching that properly to consider the conservation of either oil or gas it is necessary to take into consideration the relation of each of the other and of both to the oil and gas mining business. If, on one side, it should be said that the oil business is one thing and the gas business is another, on the other side it should be suggested that the two substances are so intimately

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related in their position and proximity and so closely allied in the manner and means of their discovery and production that, though in a sense separate and distinct, they must yet be considered in their relation to each other as factors of the oil and gas business.

In the complexity of the situation lies the chief difficulty of practical conservation. An operator may be referred to as an oil producer or as a gas producer, but the fact is that the producer of oil is at the same time, upon the whole, a more extensive producer of gas—sometimes from different fields—but generally not only from the same field, but also from the same well and even the same sand. His search primarily is for oil, not gas.

If oil and gas fields were separate and remote, and the finding of one precluded the discovery of the other so that the production of either oil or gas would not involve the production of the other, conservation of gas probably would have been long ago an accomplished fact.

The waste of gas when indulged as an incident to the production of oil, considering the latter and disregarding the former, saves labor, time, and money, at least temporarily (though by some operators thought to work a loss eventually), and for this reason the oil operator heretofore has not appeared to be (or at best has not been so considered) a very ardent advocate of the conservation of gas—and other reasons are assignable which we notice hereafter.

R. W. Raymond, C. W. Hayes, and J. A. Holmes, advance thinkers upon the subject of conservation, express themselves, substantially as follows:

Mr. Raymond states that "true conservation lies in the diminution not of use, but of waste."

Mr. Hayes says: "Disregarding the views of extremists and visionaries we may define conservation as utilization with a maximum efficiency and a minimum waste"—and he gives special consideration to the matter of actual utilization, regarding it as an essential feature of any form of practical conservation.

Mr. Holmes holds that "it is a misapprehension to think that the leaders of the conservation movement hope to bring about improvement entirely through legislation or executive orders, as neither of these agencies can be effective except as they are

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accompanied by both the necessary influences and the readjustment of economic or business conditions."

It has been said that where the profit is apparent, conservation will take care of itself. That might be true in case of immediate and large profit, but competition in the production of oil avoids the truth of the observation with reference to gas in the absence of regulation, where the profits are either remote or small.

Production of oil and waste of gas run parallel in the history of oil and gas mining operations, and the waste of the latter has heretofore erroneously been considered but the natural consequence of the production of the former.

The producer of gas endeavoring to operate distinctly as such has long ago been converted to the idea of conservation, and has discovered and applied efficient means for the practical and competent accomplishment thereof.

It has been said that "oil producers as a class are men of optimism, accepting the chances of securing oil or gas though the odds might appear against them; that the location of oil in commercial quantities has not been and is not now subject to any invariable scientific law or method; that therefore the producer of oil does not concern himself with analytical or ethical principles; that he drills a well and finds oil or fails to find it; that in this he takes severe hazards with his money, and naturally feels that, having taken the hazard, whatever he secures is his own to do with as he pleases; that consideration for the rights of neighboring operators and the public at large in the common resources have small place in his thoughts, and he feels that the right of the state to regulate any phase of his business does not exist, or, if so, is unwise and tyrannical," and in this connection it has been suggested that "formerly the old-time oil operator was wont to consider his operations the best conceivable, quite impossible of duplication in their original perfection, and himself as the highest and final authority on all oil and gas matters, firm in the belief that nothing new could be learned, and sound in the faith that 'there is nothing new under the sun'."

The Commission realizes that thoughts, methods, habits, and customs that have existed for a generation or more cannot be reformed by fiat nor superseded without reason.

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The conservation of the natural resources of the country has been a subject of great interest involving much discussion, and as a general policy has received not only the approval of thinkers, writers, and statesmen of the age, but has commanded the approval of the public at large.

The people of this state have ordered, and the legislature thereof has directed, the conservation of natural gas, and this, as a matter of wise and efficient policy, is no longer to be regarded as a visionary project. If in some quarters it should so thoughtlessly be considered, it might be recalled that regulation of business, whether public, quasi public, or private, was once practically unknown, the control of the "interests" being considered but an "iridescent dream," while at present these things under government regulation are largely accomplished facts.

The uses of gas after distribution from the place of production are usually classified as domestic and industrial, or (1) for light and heat in residences, including business houses and public buildings, and (2) heat and power for industrial concerns, mills, factories, etc.

There is some contention that the splendid adaptability of natural gas for domestic use should, in the hope of perpetuating the supply, preclude the subjection of the same to industrial use. This contention is met with the suggestion that in the matter of domestic use the difference in the volume necessary for a competent supply in the summer and that needed for a plentiful supply in the winter necessitates pipe-line facilities much larger and more expensive for transportation in winter than would be necessary at other times, and that as a consequence of this, if the furnishing of gas should be limited to supplying domestic demands only, the price that would have to follow in order to justify the enterprise would be so high as to practically prohibit the use of gas. While the supply necessary for domestic use varies as the seasons change, the amount necessary to furnish power for industrial concerns, etc., fluctuates but very little.

The importance of the conservation of natural gas doubtless is apparent, but we summarize a few of the reasons sometimes given therefor:

(1) Natural gas is the best and most convenient fuel known.

(2) Municipalities in reach of gas fields usually perfect ar-

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rangements to use the production thereof and in so doing spend large amounts of money that should be protected.

(3) Industrial concerns involving the expenditure of much capital spring up in places adjacent to gas fields which are practically worthless when the gas is exhausted.

(4) Such concerns increase the population by attracting people from abroad, who are left without employment upon the exhaustion of the gas.

(5) People, rural and urban, in the vicinity of the gas field in most cases depend upon natural gas for fuel.

(6) In communities where gas has been and is being used for domestic purposes, the houses are especially constructed for the use thereof, and would have to be differently equipped at great expense in order to use other fuel.

(7) After the adoption of gas for domestic purposes it is usually cheaper than other fuel and has an added comfort in the convenience thereof.

(8) The wealth added to a community by the increase of population and the establishment of industrial concerns on account of gas affords revenue which in time becomes indispensable.

(9) Gas is to some extent poisonous and is also inflammable, combustible, explosive, and dangerous, and therefore should be controlled.

(10) The royalty owner is more often a resident of the state, more interested in the upbuilding thereof, while being less able to sustain the loss of waste than the operator, and the law should require the operator, though willing to waste his own substance, to take care of the interest of his lessor.

Section 1 of the bill provides that the production of natural gas in the state of Oklahoma in such manner and under such conditions as to constitute waste shall be unlawful; and § 2 provides that the term "waste," in addition to its ordinary meaning, shall include: (a) Escape of natural gas in commercial quantities in the open air, (b) the intentional drowning with water of a gas stratum capable of producing gas in commercial quantities, (c) underground waste, (d) the permitting of any natural gas well to wastefully burn, and (e) the wasteful utilization of such gas.

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The ways or manner by which natural gas is usually wasted might to some extent be classified as follows: (a) In drilling wells, (b) in improperly casing wells, (c) from high pressure wells, (d) in oil production, (e) improper care of wells, (f) inefficient plugging of wells, (g) in transportation, and(h) in utilization.

On June 30, 1915, the conservation agent of the Commission, after an investigation in the Cushing field, filed with the Commission a report which sets forth the following observations:

"At the recent hearings (sessions held under the bill) you often heard the expression 'there is no waste of gas in the Cushing field.' There has been waste as high as 500,000,000 cubic feet per day, and it is probable that the waste of gas in the Cushing field at the present time exceeds 200,000,000 cubic feet per day. This waste of gas is not all open waste through wild or unclosed wells, although that kind of waste exists in the fields, but other waste is going in the following manner: "(a) Open waste during drilling, (b) open waste through Braden-head, (c) waste of gas from flowing oil, (d) underground waste or what is sometimes called infiltration.

"Waste is frequently allowed to continue through the night when only daylight drilling is done. In other cases the tools are allowed to work swinging from a beam for the purpose of leading the casual observer into believing that drilling is progressing while the gas is wasting.

"Waste through Braden-head is of various characters. There is always a certain element of danger in shutting in the Braden-head when the tools are being wrenched, and for this reason operators do not care to close a Braden-head in any of their drilling operations, and in a great many cases there is no valve or other provisions on the Braden-head whereby the gas may be shut in and waste is of course continuous. The waste from Braden-head is frequently concealed and the methods of concealment include the following: Burying the pipe running from the Braden-head and releasing the gas in sand, rock piles, or under water; for instance, the river in the Cushing field. The Braden-head is sometimes connected with the flow line, and gas is allowed to escape with flowing oil. Sometimes a line from the Braden-head is run into the flow tank to induce the belief

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that oil is flowing instead of gas. When an oil operator desires to waste gas, and it is more easy to allow it to waste than it is to hold it, he devises a great many clever schemes to enable him to accomplish his purpose. Waste of gas with flowing oil is sometimes due to mingling improperly gas and oil in the well, and is largely unnecessary, if not wholly so.

"Underground waste exists where the gas is exposed to the open hole. This practice is most common in Braden-head gas. The methods of prevention are included in proper drilling and casing. If gas is of sufficient value to recover, there can be no logical objection to adding a few hundred feet of casing so as to set the casing immediately on top of the gas sand and preventing leakage through the hole, as this amount of casing must be considered the same as line pipe on the surface. The pipe line for gas should be from the immediate source of supply; namely, the gas sand. No earthen formation will hold gas as well as iron or steel pipe. If gas is not worth the expense of a few feet of extra casing, then it should be saved from injury, and not permitted to waste, and this can be done by sealing off the gas sand with mud-laden fluid. The essential thing to consider is that all wells should be cased alike. If this is not done there is but one method known to the writer which will save the gas from waste, and that is by completely sealing the gas sand with mud-laden fluid. . . .

"Thus far the general manner of gas waste in the field: There is an oil waste, but for the present the waste of gas is the most important thing in view of the fact that the natural gas industry is to-day seriously threatened with extinction, not because gas might not be available in the future, but because the short life of the gas fields of Oklahoma heretofore incident to the enormous waste which has invariably occurred will deter sound minded business men from making investments dependent upon our gas supply."

The Bureau of Mines in a technical paper by Messrs. J. A. Pollard and A. G. Heggem, makes the following observations:

"One of the greatest wastes of natural gas is that which often takes place in drilling oil wells. If a well is being drilled by one of the usual methods the gas becomes a hinderance to drilling and the driller regards it as a nuisance, or the gas may be

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found in a field where it has little or no immediate commercial value, and hence is allowed to escape into the air without restraint.

"In many parts of the Mid-Continent field the manner in which wells are cased shows that little or no attention is paid to the protection of gas sand. At some wells the gas is taken from the sands through hundreds of feet of open hole, the last or inner string of casing being stopped far above the gas sand, leaving the lower part of the hole uncased. When such well is shut in much of the gas escapes into the porous beds below the casing and is wasted." (Technical Paper 66, Petroleum Technology 14.)

The Bureau of Mines in a technical paper by Messrs. Ralph Arnold and Frederick G. Clapp, makes other observations as follows:

"Instances are common where carelessness and indifference in drilling have resulted in waste of gas from formations penetrated above the regular sand. One method of waste of this kind is described by McDowell in the following words: 'In drilling for oil in some districts large gas wells are found in sands above the oil sands. In many instances the pressure and the volume of such wells are so great as to prevent drilling to the lower oil bearing sand until the well has been allowed to exhaust its gas production into the air, sufficient to permit the resumption of drilling. Usually this criminal waste is allowed to continue until the gas-bearing sand is nearly, if not quite, exhausted.' . . .

"The term 'waste' should properly be used to include not only the amount of gas actually dissipated, but also that which after discovery placed beyond the possibility of recovery. . . . A large amount of gas has been placed beyond recovery by wells having been allowed to flow gas at their full capacity, thus causing the pressure to drop rapidly and allowing adjacent pools of salt water to flood out the gas from that particular part of the sand. This is true in all fields in wet sands, but especially so in Oklahoma. At many wells the gas is allowed to blow into the air for half an hour every morning in order to free the well of water. This is unnecessary as syphon arrangements can be made for this work, assisted, if need be, by pumping. . . .

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"Another form of waste in utilization consists in piping gas back into an oil well in order to force the oil to the surface, the gas generally being allowed to escape when it finally reaches the oil tank. . . .

"Several states have laws requiring the gas inspectors to supervise the plugging of all dry or abandoned wells. Some states have no such laws, and in these the plugging is generally improperly done with the result that at many wells water from a water sand is permitted to flow into a gas sand, drowning out the gas supply. Although the larger companies appreciate the problems involved and take particular care in their work, the smaller companies and the individual operators generally consider it easier and cheaper to pay little attention to plugging. . . . There have been many wells with a production of 10 to 20 barrels of oil and 5,000,000 to 10,000,000 feet of gas per day at which the oil was saved and the gas allowed to escape unchecked. . . . "Legislation has been effective to some extent in Indiana, Ohio, and Pennsylvania, yet the credit of overcoming the waste there is due not wholly to legislation, but largely to the attitude of the companies themselves, the officials of which have tried to economize in various directions. Waste in these states has practically ceased."—(Technical Paper 38, Petroleum Technology 6.)

In recent times considerable progress has been made in the discovery and adoption of new devices and appliances for securing economy and safety in oil and gas mining operations, and in this connection we might observe that this Commission has had very little experience with the antiquated operator mentioned by a writer heretofore quoted, as it has usually found the operators of this state abreast of the times and willing to co-operate with the Commission in carrying out the law pertaining to matters involving their business and falling within the jurisdiction of this tribunal.

Since the first discovery of oil near Bartlesville, Red Fork, and Nowata following closely upon the allotment of Indian lands, prospecting for oil in the eastern part of the state has been continuous, and development has been rapid and abundant. During a large part of the time the chief transportation facilities were owned by parties actively engaged in producing oil.

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and for a long time this state had no statute requiring common purchaser or common carriers to purchase ratably from all producers alike, nor restraining parties producing and transporting at the same time from producing and transporting from the common sources of supply, while neighboring operators without a market had to either tank their oil or see those favored by the pipe line and the market get it all. Until very recently this state had no statute regulating the manner of oil production and restraining waste.

It is commonly charged that the pipe line companies being engaged heretofore, as aforesaid, in the production of oil, got the "lion's share" of the early production in the fields of Nowata, Washington, and Tulsa counties and in the famous Glenn Pool field. The fact is that the average operator, as a matter of self-defense, had to manage the best he could to prevent the operating and producing carriers from obtaining the entire benefits and advantages of the common sources of supply. Conditions which the average operator had no power to prevent or avoid seem to have largely induced the great waste of both oil and gas that has been suffered in this state.

When a well of large volume is permitted to flow unchecked, it attracts attention, but the daily waste from the numerous small wells by open flow above ground and the continuous dissipation of gas in all wells defectively cased, by underground waste, constitutes a far greater menace.

Attention has been called to the fact that all operators generally at the hearings suggested that no great waste was at present going on in the Cushing field, but the report referred to indicates that the daily waste of gas in said field at present exceeds 200,000,000 cubic feet, having in time past reached as high as 500,000,000 cubic feet, and in this connection we might say that Messrs. A. J. Diescher and F. P. Fisher respectively, manager and assistant of the Wichita Pipe Line Company, who are gentlemen of wide experience and extensive information in the matter of producing and distributing natural gas, and who also have a comprehensive understanding of conditions in the Cushing field, estimate the waste in said field at an amount in excess of that above mentioned. They express themselves as being of the opinion that in the past not more than 10 per cent of the gas produced

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in the Cushing field has been utilized, and that in the time embracing the years 1913 and 1914 and the first half of 1915 waste of gas in the Cushing field amounted to 200,000,000,000 cubic feet.

This amount at 2.5 cents per thousand cubic feet, the price at which gas has been sold in said field, would be equal to $5,000,000, and at 25 cents per thousand cubic feet, the price at which gas is sold for domestic purposes in municipalities nearest production, would amount to $50,000,000.

It has been estimated by students of the gas question that approximately 2,000,000 people rely upon the Mid-Continent gas field for their gas supply and that enough gas has already been wasted in said fields to extend this supply for ten years to come, and it has also been estimated that sufficient gas has been wasted in the state of Oklahoma to supply its present demands for the next thirty years.

Mr. John Smith of the firm of Smith & Swan, now operating near Henryetta, Oklahoma, advises the Commission that in his opinion the amount of gas wasted in oil and gas mining operation in this state exceeds in value the oil produced.

The Bureau of Mines (1913) makes the following observations:

"The history of the natural gas industry of the United States is an appalling record of incredible waste. . . .

"In Ohio, Indiana, Pennsylvania, and parts of West Virginia there was in the past much waste; . . . but it has long since ceased owing to the business-like attitude of the larger companies and the efficient state regulation in some cases. The most notorious waste at present (1912) is in Oklahoma, Louisiana, and California. . . . McDowell states that the daily waste of gas in Oklahoma by escape into the air is equivalent to at least 10,000 tons of coal daily and he states that 80 per cent of this loss is preventable.

"McDowell estimates the gas wasted in oil production in the Oklahoma fields during the past five years to be more than the value of all the oil produced in that time. He states that 'many gas sands are entirely free from oil, while gas in varying quantities is always found in oil-bearing sands. All flowing oil wells are also gas wells of more or less volume. It is not uncommon to

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find an oil well producing 50 to 100 barrels of oil also producing from five to ten million feet of gas per day, the gas at a low rate being four to five times the value of the oil. The oil producer in his insane greed for riches, fortified by the long-established custom, is the principal transgressor. Having no immediate market for the gas of the upper sands, he allows it to exhaust itself in the air until the pressure is reduced to a point where he can resume drilling; then he penetrates the oil sand where he may, and frequently does, develop a well producing from 5 to 10 barrels of oil and from five to ten million cubic feet of gas, the latter having a fuel value at a very low figure per thousand feet of many times the value of the oil. In nearly every new oil development the oil wells produce gas from the oil sand in considerable quantities. The oil producer, if in need of power, uses what gas he requires for power purposes, and turns the balance loose, looking on any surplus gas as nuisance, to be gotten rid of, claiming the right to do as he pleases with his own product, and in the absence of legislation on the subject he seems to be acting within his rights.'

"According to the Oil and Gas Journal of March 6, 1910, a well in the Preston field, near Okmulgee, Oklahoma, was at that time permitted to run wild at the rate of 36,000,000 cubic feet of gas per day. It had then been opened for several weeks in the hope that it would become an oil well. There was no way to take care of the gas, and the pressure was so great as to make it impossible to operate tools in the hole. On the date mentioned the well had begun to spray oil, and the gas pressure had declined somewhat, thus indicating that it would probably make a good oil well. It was calculated that a total value of $22,680 worth of gas escaped into the air in the three weeks that the well had run wild.

"Another well in the same field was estimated to have a production of 40,000,000 cubic feet per day, and this was allowed to escape into the air for ten days, entailing a loss of $12,000. In the Glenn field there was similar loss of gas, although on a smaller scale. 'The result was that before the Glenn field was three years old it was without sufficient gas for its own necessities, and gas had to be pumped into the field from outside

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the gas from this area comes from a sand bed 12 feet above the oil zone. This could be saved by employing proper methods of drilling. Little gas really occurs with the oil. There is not a well in the locality but that will produce from 2,000,000 to 24,000,000 cubic feet of gas daily. It has been allowed to waste in the most extravagant manner. . . .

"The Cleveland pools extend from Cleveland southward for 6 or 7 miles. The region had two distinct developments. The old development was at a depth of 1,600 feet in what is known as the Cleveland sand, and the new development began in March, 1911, in the Bartlesville sand at a depth of 2,500 to 2,700 feet.

"Most of the wells of this area produced immense volumes of gas, which in some cases flowed openly for a year. The gas yield was almost wholly wasted. One practical man shut his well in and furnished gas to the new drilling wells in this and near-by fields. He made a profit of $60,000 from the sale of gas and still has the well in use. In practically all of the Cleveland wells the gas is allowed to blow the oil into 1,600 and 2,400 barrel flow tanks. The casing heads are connected with 6-inch flow pipes, which allow the gas to flow at full volume. Had 2-inch tubing been used, the flow of gas would have been reduced, and the same amount of oil would have been obtained.

"Very few of the Cleveland wells were gauged, but it is thought that each well produced from 3,000,000 to 30,000,000 cubic feet of gas daily. The initial yield of the oil well was 400 to 12,000 barrels a day. Much of the oil had been 'cut' with gas and water, and had accumulated in waste pits, mentioned previously under the head of oil residue. While driving through the Cleveland field several very rich wells were noticed flowing oil at a remarkable rate. Many of the wells were heard blowing oil and gas into large flow tanks. The gas could be seen shimmering from the top of the flues on the tanks, and often it was so rich in heavy vapors that it would sink to the ground. The valleys or gullies through some of the richer parts of the field were full of heavy gas, which seemed to hang like a fog over the ground. Numerous signs calling attention to the danger of smoking were nailed on fences and trees bordering the road. It was obvious that the gas from this area would have been very valuable had it been conserved and marketed. . . .

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"The latest field to be opened lies 12 miles east of Cushing, Oklahoma. The Cushing field was tapped in March, 1912, and since that time the development has spread remarkably fast. It is about 5.5 miles long by 3 miles wide. At the time of the visit there were about 70 producing wells and about 75 rigs up that were either drilling or waiting for operations to begin. . . .

"Immense quantities of 'wet' gas (gas mixed with oil vapors) are found at each well in the Cushing field. The amount varies from 4,000,000 to 20,000,000 cubic feet. About 15 wells in the area have blown an average of 4,000,000 to 5,000,000 cubic feet a day for several months. The gas of the area has not been measured except in the case of several 'dry-gas' wells, which lie along the eastern side of the field and are shut in for a future market. All the 'wet' gas was being wasted, except in one case, where it was caught in a steel separator and utilized in an office building at the Fulkerson camp in the field. About 20 wells were observed flowing gas and oil through 6-inch tubing into flow tanks.

" . . . The roar of the gas from these tanks could be heard half a mile away. It was impossible to secure samples of gas from either the wells or the tanks because the wells were tightly closed and the flow pipes contained too much oil. A cotton field was covered with oil for one fourth of a mile in all directions. When the wells are completed, the gas blows the oil high into the air, whence it is carried by winds over the adjoining land.

" . . . Several oil men have estimated that during the months of September and October, following the chief development in August, the waste of gas has amounted to 50,000,000 cubic feet a day. A conservative estimate placed the total waste of gas at 200,000,000 cubic feet since August. As very few wells have been shot because of the gas flow, the waste from the whole field may aggregate 1,500,000,000 cubic feet (1913).

. . .

"The Bald Hill area lies about 12 miles northeast of Okmulgee. The area is known as Bald Hill or Twin Hills. The waste in this territory has been considerable. Flow tanks are used in this field to catch the oil and the gas escapes. The daily waste of gas is about 8,000,000 cubic feet. The gas appears to

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be very rich and heavy as it leaves the tanks. Many leaky gas lines were observed over the field, and considerable waste was noted. The largest waste observed was from . . . a well which had been drilled in ten days previous to our visit and had blown into the air for about six days. The estimated waste during this period was about 5,000,000 cubic feet a day. At this time the well had been partly closed, but a drill stem had been lost in the hole. The waste during the remaining four days was about 2,500,000 cubic feet, making a total waste of perhaps 40,000,000 cubic feet. . . .

"The Schulter field is a narrow pool about 4 miles long lying about 2 miles southeast of Schulter and 10 miles south of Okmulgee. In the northern part of this field the gas was not being wasted at the time of our visit, but the past waste had been enormous. . . .

"The lower end of the Schulter field is called the Bartlett pool. When visited, about 25 wells had been drilled since March, 1912, each of which had produced perhaps 15,000,000 to 30,000,000 cubic feet of gas daily. Most of this had been wasted. One of the chief operators of this district said that the waste would approximate 15,000,000 cubic feet a day. For 300 days this makes a total of 4,500,000,000 cubic feet.

The Bruner allotment was visited. This well had blown gas for 296 days at an average rate of 6,000,000 cubic feet a day. The original flow of this well was given as 22,000,000 cubic feet a day. The total waste of gas from this well up to December 21, 1912, was estimated at 1,776,000,000 cubic feet. . . .

"The chief waste of gas in the Oklahoma fields (1912) has taken place in the Cleveland-Osage area, in the Glenn Pool, in the Bald Hill field, and in the Schulter field. The estimated annual waste in this state during the years 1910 and 1911 was about 100,000,000,000 cubic feet. Most of this took place in the Cleveland-Osage area, and in the Bald Hill and Schulter fields. The total waste previous to these years was probably about 150,000,000,000 cubic feet of which one third came from the Glenn Pool and the remaining two thirds, since 1902, from widely scattered areas. The loss in 1912 was not so large as in previous years, but on account of the waste of 'wet' gas in the

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Cushing, Schulter and Bald Hill fields, and the waste in parts of the Osage lands, the total loss for the year is probably 25,000,000,000 cubic feet. The total loss in the past in the state of Oklahoma was about 365,000,000,000 cubic feet. It is not unlikely that the aggregate waste in Kansas was 50,000,000,000 cubic feet, if not more. The grand total of gas wasted in the Mid-Continent area, according to these estimates, would be 425,000,000,000 cubic feet. The writer is confident that this is a conservative estimate (1912.)

"The total daily consumption of gas in the Mid-Continent area is about 100,000,000 cubic feet. At this rate enough gas has been wasted to have supplied the present demand for about twelve years. At the present rate of consumption in Oklahoma the gas that has been lost would have served this state for about sixty years. The intrinsic value of this lost gas, if it had been saved, would doubtless exceed the value of the oil that has been produced from these fields.

"About 20,000 productive oil wells have been drilled in the Mid-Continent fields, from which there has been wasted to January 1, 1913, an average of about 300,000 cubic feet of casing-head gas per well. The total waste of gas from casing heads was about 6,000,000,000 cubic feet. The amount of gasolene that could have been extracted from the lost gas is variable, but undoubtedly it would have reached several millions of gallons.

. . .

"Two suggestions are offered for the prevention of needless waste of gas. It should be made compulsory to use the proper methods for conserving the gas found above the more important oil and gas bearing horizons. As has been pointed out, a large amount of the upper gas has been and is being wasted, and immense quantities of gas have been lost, and fields have been prematurely invaded by water through failure to use the best methods in drilling and casing wells and through wasteful exploitation."—(Technical Paper 45 by Raymond S. Blatchley.)

In many instances in the state gas deposits have been discovered, and on account of lack of an immediate market the same have been shut in by the lease owners, but when later opened up it was found that the gas had escaped by under-ground waste, dissipation, or infiltration. The operators, no doubt having gone

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to the expense of trying to preserve the supply, thought they had properly attended to the matter, but the escape of the gas would indicate the means or plan adopted had been inefficient.

At the hearing at Okmulgee Dr. L. S. Skelton, who in an early day in the history of the gas business in this state built a distributing plant in Sapulpa and one in Okmulgee, and who also has had much experience in the production of natural gas, stated that in his opinion there had been 10 feet of gas wasted where there had been one used in the Okmulgee fields; that he favored regulation by the Corporation Commission and that in his opinion when drilling for oil if gas is found it should be closed in the stratum where found; that in his experience and observation he had known good gas fields to be discovered and the wells to be shut in by the usual methods applied in the Okmulgee fields, but that the gas disappeared sometimes even before a pipe line could be completed.

Other witnesses of experience referred to the discovery of large wells, the capping-in of the same, and the construction of pipe lines thereto and then to the discovery that the gas though apparently shut in had escaped while the pipe line was being built.

On this subject the Bureau of Mines writes as follows:

"The greatest and most evident waste of natural gas occurs when a well is allowed to go 'wild' after being drilled into a gas-bearing stratum. Other wastes of perhaps as great importance occur in drilling by the usual methods. Gas is often allowed to escape freely while a well is being drilled through a gas-bearing sand in the search of oil. In some wells an attempt is made to save the gas by shutting it in with a string of casing, having a packer at the bottom and a stuffing-box casing-head, known as a Braden-head, at the top. Between the packer and the casing-head there is usually a large amount of open hole; that is, a hole in which the gas is confined in direct contact with the strata penetrated, and the strata may be porous. Much of the gas enters the more permeable strata, sometimes forcing its way to great distances and is lost, so that when the well is opened at a later day the available supply of gas has decreased to such an extent that it is of practically no value to the owner. This subterranean movement of natural gas sometimes leads to the rejuvenation of

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exhausted gas sands, which has been observed in some of the older fields, and in other instances has constituted a formidable danger by establishing a 'stray sand,' the unexpected encountering of which at another well may result in a gas fire with attendant loss of life and property. . . .

"The wastefulness of existing methods (in Oklahoma) of drilling and shutting in wells was generally admitted and regretted by the operators, but as there was no apparent remedy the waste was regarded as necessary and of no material importance. The following somewhat equivocal article published in a journal devoted to the petroleum industry excellently illustrates this attitude:

" 'While it is true that some big gas wells have been found at Cushing, in the defined oil district, it is also true that this gas has been found above the oil sand, and that, when first found, it was impossible to drill through to the oil sand until the force of the gas had abated somewhat. It is also true that, while waiting for the pressure to subside, a lot of gas was wasted. However, as there is no market for the gas at Cushing, it might just as well be wasted.' . . .

"Such enormous waste of an important natural resource indicates that the methods that were employed were faulty, and that better methods, which shall at once be successful and practical, should be devised. For this purpose the Bureau of Mines proposed to investigate the possibilities of adapting the use of clay and water, which was devised for use with rotary rigs, and developed in Louisiana, Texas, and California, to the dry-hole method of drilling practised in Oklahoma. . . . This demonstration of the well-drilling method proposed by the Bureau of Mines proved the following points:

"1. The escape of gas from a well during drilling can be controlled, and formations can be sealed so as to prevent the further escape and waste of gas.

"2. The sealed formation may be reopened at any time by removing the fluid from the well, the pressure of the gas cleaning out the mud so that the field will not be affected.

"3. By sealing off gas with mud-laden fluid it is possible to drill entirely through a gas-bearing sand without wasting gas.

"4. A record of the gas-bearing formations can be obtained

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with an accuracy that is impossible with the 'dry hole' method of drilling for the reason that on drilling a hole 'dry' the gas blows all the finer drill cuttings from the well and only occasionally are fragments found that are large enough to show the character of the formation penetrated. . . . The demonstrations by the Bureau of Mines show that the waste of natural gas in drilling and casing oil or gas wells is entirely unnecessary and may be prevented by suitable precautions. These precautions may be outlined as follows:

"1. Seal each gas-bearing stratum as it is encountered, by drilling with the hole full of mud-laden fluid.

"2. Set each string of casing with a secure and water-tight seat, using a long shoe or packer to assure tightness.

"3. When casing through a gas-bearing stratum, keep the space between the casing and wall full of muddy fluid.

"4. Place a gate valve on top of the inner string of casing before drilling into any gas-bearing stratum.

"5. The string of casing through which gas is taken should be seated on top of the gas sand, and the gas should be prevented from coming in contact with the wall of the hole above the same.

"This precaution should be observed when gas is taken through a Braden-head at an oil well as well as when a well is drilled for gas alone."—(Technical Paper 68—Petroleum Technology 15.)

The means usually proposed for conserving the natural gas supply of the country might be classified to some extent as follows:

1. Care and precaution in drilling.
2. Proper casing of wells.
3. Saving gas from oil wells.
4. Controlling and capping wild wells.
5. Improved methods of holding the gas back during drilling operation and of confining the same in place for future use.
6. Proper care of wells.
7. Equitable regulation of the taking and sale of gas from the common source of supply.

As indicated heretofore, the methods ordinarily used in the state of Oklahoma for retaining the gas in place, after discovery, for future use, have not been successful.

The use of packers, casing, the stuffing-box casing-head, or

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Braden-head, and plugging is commonly resorted to, and it is thought that cement might be more generally used, while no well should be drilled or operated without the control casing-head, which though used is not always found in the oil fields of this state.

The mud-laden fluid or mudding-in process appears to be in general use wherever the rotary drill is used, and those best informed express the opinion that this process is very well adapted to the plan of drilling generally followed in the state of Oklahoma. The process is described as being simple in preparation and not difficult of application.

It appears that in operations in this state the packer is used upon the discovery of a gas sand; that just before penetrating the sand when its depth is once discovered, a smaller drill is used, thus making a shoulder in the wall of the hole, and thereupon a packer is placed, upon which the upper string of casing rests; that sometimes a packer is placed immediately below the sand and the gas is kept in by these packers and a short string of casing extending from one to the other; that when only one packer is used, being located above the sand, a Braden-head or stuffing-box casing-head is used above ground to hold the gas in between the outer and inner pipe; that sometimes upon the discovery of a water sand, packers above and below with casing intervening are used to hold the water back in the sand and prevent its entrance into the well.

It also appears that cement is very extensively used in other fields in perfecting the shoulder for the packer to rest on and sometimes in filling up the space between the wall of the hole and the permanent casing, and also for plugging; that in England and France the law requires dry or abandoned wells in coal areas to be plugged from top to bottom with cement, and the Commission is of the opinion that cement should have been used in the matter of casing and plugging to a far greater extent and more competently that it has been used in this state.

It also appears that the control casing-head with anchoring to prevent blow-outs, accidents, and fires and also waste of oil and gas, is generally used, but not as extensively as it should be used.

The "mudding-in" process or "mud-laden fluid" method as heretofore indicated is of general use in other fields, and has

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proved very satisfactory, but it does not seem to have been adopted to any extent in this state.

A writer familiar with the process describes it as follows:

"In this paper the term 'mud-laden fluid' is applied to a mixture of water with any clay which will remain suspended in water for a considerable time. The fine sticky clays that in many places are termed 'gumbo' are well suited for this purpose.

"Some oil workers have thought that 'mud-laden fluid' implies the use of any of the drillings from the well; but this is not the case, for if any coarse material in the drillings, such as sand, is used it will settle in the well and prevent the bit from striking the bottom of the hole. The proportion of clay that should be mixed with water to insure the best results is about 20 per cent by weight. With this proportion of clay in the water it is impossible for the driller, no matter how experienced he may be, to tell whether there is any clay at all in the hole, for the tools work about the same as they would if the hole were filled with clear water. An excellent idea of the consistency required can be obtained by comparing the action of a stream of sand pumpings, or muddy water, running in a ditch with that of clear water. The sand pumpings contain fine material that is deposited on the walls, and especially the bottom of the ditch, where it forms an ever-stickening protective coating; clear water, on the other hand, cuts away the sides and bottom of the ditch and may cause it to cave. Between clear water and water containing more mud than can be held in suspension by the current, it is possible to find a mixture of clay and water that will deposit part of the clay as a fine, protective coating while the rest of the clay remains in suspension and passes through the ditch.

"The action of the mud-laden fluid on gas rock or gas sands, or other porous formations, can be likened to the action of muddy water going through a filter. In any filter that has been used for some time, it will be found that most of the sediment from the water has been deposited on the surface of the filter, but some of it has entered the filter, the proportion diminishing with the distance penetrated.

"The distance to which clay from the fluid in a well will penetrate a porous formation depends on the excess of pressure produced by the column of fluid or by the pump, and also on the

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porosity of the formation, but finally no more water will go through.

"Some drillers contend that clear water should have the same effect as the mud-laden fluid, but the results of trials have shown that it does not. Many wells cannot be filled with clear water, because the water continues to flow into the rock or sand without any clogging effect, and in consequence does not rise high enough in the well to give a pressure sufficient to overcome that of the gas. Drillers have attempted this method, using clear water, and have permanently drowned out a gas sand. Further than this, clear water causes the walls of the well to slack and cave and 'freeze' the pipe.

"The action of the muddy water is entirely dissimilar. The fluid enters the porous stratum for a short distance, and deposits clay that clogs the openings and finally prevents the further inflow of fluid.

"Should it be desired at any time to recover the gas from a porous bed that has been clogged, all that is necessary is to bail down the fluid in the well until the pressure of the remaining fluid is less than the gas pressure. The fluid will then be forced out of the well by the superior gas pressure, and the gas sand will be thoroughly cleaned of all mud. By using this method the operator can seal or unseal at will a gas-bearing formation.

"In order to save time in preparing the clay and water mixture for a well it is recommended that a slush pit about 15 or 20 feet long, 10 feet wide, and 3 feet deep be dug close to the derrick. The place for this pit does not matter much except that it should be on the lowest side of the derrick, so that when the well is bailed the fluid will run into the pit without trouble. When a well is being drilled through beds of clay the drillings from these beds can be turned into the pit as they come from the well and thus be saved and kept from becoming mixed with sand and shale drillings. Care should be taken not to mix with this fluid any material that will not stay in suspension."—(Technical Paper 66, Petroleum Technology 14.)

For further reference to this subject and all others herein discussed, attention is called to the following publications issued by the Bureau of Mines, Washington, D. C.: Technical Paper 32, Petroleum Technology 3, Cementing Process; Technical Paper

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38, Petroleum Technology 6, Wastes in the Production and Utilization of Natural Gas; Technical Paper 42, Petroleum Technology 8, Prevention of Waste of Oil and Gas; Technical Paper 45, Waste of Oil and Gas in Mid-Continent Fields; Technical Paper 66, Petroleum Technology 14, Mud-Laden Fluid applied to Well Drilling; Technical Paper 68, Petroleum Technology 15, Drilling Wells in Oklahoma by the Mud-Laden Fluid Method.

We have heretofore referred to the witness, A. J. Diescher, who, after appearing before the Commission at Bartlesville, later reduced his observations and suggestions to writing and filed the same. His statement is as follows:

"Relative to the matter of gas conservation in Oklahoma, I desire to submit the following information and suggestions, as to the gas waste and possible methods of accomplishing conservation to protect and assure an ample future supply of gas to the people.

"The greatest waste which has occurred in recent years has taken place in the Cushing field. The quantity wasted in the past has been far greater than the public in general, and even the operators causing the waste, would possibly conceive, without actually measuring each well and arriving at the total for the field. This waste at present while still great has been reduced greatly from what it has been in the past owing to the depletion of the great reservoirs which have been exhausted.

"The importance of conservation measures lies in saving the remnant of the present developed supply and in preventing recurrences of waste in the development of deeper or other present unknown deposits in that field or in other fields of the state.

. . .

"It is of the utmost importance that conservation become effective before any new deposit, either deeper or elsewhere, be found, as there is no time so easy to take measures to stop waste and control the supply in a field as before that waste commences.

"One thing about gas waste which enters as one of the greatest elements causing the continuance of waste lies in the fact that in no gas field and especially no extensive gas field, where many operators work, does anyone really comprehend what the magnitude of the sum total of all waste is. Each operator is

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especially interested in his own particular lease, and does not come in sufficiently close contact with the conditions on other leases to know the true state of affairs to be able to form a reliable judgment of what is actually taking place in the field as a whole. Then again, in the past the individual oil operator has not paid much attention to know just what the waste was on even his own property, by actually measuring it to know, resulting in a very insufficient knowledge of the entire situation to really realize the extent of the waste. Again, the average oil operator always looked upon gas in oil wells as a nuisance and something to be eliminated as rapidly as possible, and has never given this valuable public resource the benefit of his good will and consideration, to learn sufficient regarding the gas business to really comprehend what he is doing in causing this waste. . . .

"The first and possibly one of the most important steps to terminate this awful waste is publicity. That is, to make the oil operator, as well as the public, realize what this waste amounts to. The larger gas operators and pipe-line companies who must study each field as a whole, who must look ahead several years at all times to assure a future supply for the people they serve, alone are in position to-day to realize the extent of this waste. They, alone, have studied it, have taken gaugings of flow and rock pressure in various parts of the fields and sands, and have compared the gaugings of the fields as a whole at frequent intervals to see the rate of decline. At present, they alone fully realize the awful extent of this waste which has gone beyond recovery. Such gaugings soon teach one that this loss is so far in excess of all possible judgment of even experienced gas men, who have not gauged the fields, that it is only natural and to be expected that the oil operators and others interested or located in the fields should be unable to conceive and should doubt the actual extent of this waste.

"Based on such study and measurement, the writer, as manager of one of the large pipe-line companies, with wide knowledge of the true situation, is assured that the gas wasted in the Cushing field alone to date is greatly in excess of 200,000,000,000 feet, and that not over 10 per cent of the gas originally stored there and taken from the reservoirs has ever been consumed for any useful purpose, either in the fields or for the market.

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"The reason for this apparent lack of knowledge on the part of the oil operator as to the true situation in the field is that such a large percentage of the total surface waste is through the waste of so many oil wells blowing comparatively small quantities (say a million or less cubic feet daily) of gas into the blow tanks where exhausting over such a large area as the tank, is not readily observed and its significance not comprehended until actually gauged, as individual wells. Four hundred or even one hundred such wells in any field would soon drain the field and destroy the people's gas supply.

"The great remedy for this condition lies in a periodic gauging of every well in a field, whether a large or small well, ignoring none and mathematically arriving at the actual extent of the waste.

"The periodic measurement of the wells and publication of the total volume of waste in each field, bringing home to each producer the enormous extent of such waste, would be powerful influence in enlisting his efforts to terminate this waste, by arousing his spirit of honor and co-operation in stopping a colossal wrong through making him aware of the extent of the same. Also through enlisting the power of public opinion in stopping a wrong in which every citizen is concerned.

"The money value of the gas actually wasted in the Cushing field in the past two and a half years is conservatively stated as not less than $20,000,000.

"There are two losses occuring in the fields, both of which are of serious importance, and both of which must be effectively controlled and eliminated if the gas resources of the state are to be conserved. The one is the blowing of gas to the atmosphere and the other is the underground waste whereby the gas escapes from the stratum in which it was originally found to other previous formations from which it is impossible to recover it to any great percentage. Both of these losses exist to great extent in most gas fields and to enormous extent in the Cushing field.

"The blowing of gas to the atmosphere is so self-evident and so visible in the fields it cannot be questioned at all.

"The underground waste is not so apparent on the face of it, and in some quarters not so readily understood and accepted as a fact. However, there are so many cases in existence where the

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demonstration is so clear and apparent that it cannot be questioned by any experienced gas man. Again, for its absolute proof, one need but only consider the wide spread, though erroneously based, principle accepted by almost all practical oil and gas men that you cannot close in a gas well to-day and come back in a year or more and find the supply there when you want it, or at least in the same condition as to volume or pressure as when closed in. This generally accepted experience is the absolute proof of the wide-spread extent of underground waste. That gas was tapped in the stratum in which it was found without any doubt over an enormous period of years, the only change which has taken place in its confinement upon drilling into it is that the cap rock forming the sealing element has been tapped or broken by the drill hole. Outside of this drill hole, no change has taken place in the sealing formation of gas deposit, and the only avenue for escape is through the channel of this tap. The only reason that it flows through the channel is that the puncture made by the drill has not been sufficiently sealed off either due to a careless attempt to seal it or else to an inefficient method or appliance to seal it off. In the past, there was generally one or two ways adopted to seal in this gas, or else no attempt was made to confine it in the sand it was found. One way was the use of a tapered shoe at the foot of the casing, causing the shoe to wedge into the hole by the weight of the casing above and close off the hole, conditional that the hole was sufficiently regular and soft enough material to permit the shoe to come to a rest all around. The other was the use of the well-known rubber packers whereby a rubber sleeve on the outside of the pipe was compressed by telescoping the pipe, causing the rubber to swell out sidewise against the wall of the hole and fill off the opening between the pipe and earth with such tightness as to prevent gas of even such high pressure as 1,000 to 1,200 lbs., per square inch, passing around the packer. The sidewise pressure on this rubber to hold it against the earth wall tight enough to keep such high pressure of gas from escaping around it is enormous, and to this pressure is added an additional pressure on this rubber due to the further swelling effect of oil coming in contact with the rubber. Most rubber when placed in oil will soften and swell, often to double its normal size. This swelling effect produces a further strain

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on the rubber greatly tending to a general rupture of the material. The least crack or seepage of gas around the rubber will act as a knife in cutting the rubber, and where leakage is once started no rubber packer will remain intact long, as is evidenced by the very common blowing of pieces of packer rubber from oily gas wells upon testing them. So far, these methods of packing gas sands are very ineffective. There is one method known as the mud-laden fluid method which has been very successfully used and which is fundamentally correct in principle. This will be readily understood when you consider that the shoe or packer methods alone represent nothing more or less than trying to build a partition in a hole perhaps several thousand feet underground, in an earthen hole offering a most fragile and irregular support for such partition, where every element is against one in making an efficient job, and where the partition is completed you may have a pressure of even 1,200 lbs. per square inch on one side trying to force it out of place and in a certain sense an open void of practically no pressure on the other side of the partition. With such severe conditions of packing where it is impossible to inspect the job with the eye, it cannot be expected that any efficient job can be made as a regular thing. On the other hand, the mud-laden fluid method does not depend alone upon such a partition, but overcomes the tendency of the gas to escape around the casing by overbalancing the pressure of the gas by a column of mud of equal or greater weight per square inch than the gas pressure to be confined. The advantage of this method is that regardless of the character of the earth formation sealing in the gas stratum, the mud will find its way into all crevices, cracks, or holes and counterbalance any escaping tendency of the gas, and is therefore fundamentally more correct in principle than the regular rubber packing methods commonly used.

"Not only is this method more rational in principle and more efficient in operation, but it is, in the long run, more economical, and results in a lower total cost per well than with the packing methods. This is a proved fact in our own operations where we drill gas and oil wells to a depth of 2,500 feet in the Augusta, Kansas fields, passing through two or three gas sands, several very heavy water sands into the oil sands underneath, and in

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which wells we successfully close off all water and gas sands by using the mud-fluid process, after failing to make efficient jobs with regular packers, and do this at a total cost per well of at least $500 less than under the regular packer methods, due to saving much casing in drilling under that process.

"In fields like the Cushing field where 10 to 15 gas, oil, and water sands are encountered in single wells, and where the Tucker sand and the top of the Mississippi lime are yet to be encountered as possible producing sands, it is absolutely impossible to efficiently protect all sands encountered, by present methods of drilling, casing, and packing. It is absolutely beyond any possibility within the casing range of such wells unless the mud-laden fluid process of packing is used, in which case much casing can be omitted from the well effecting a far greater saving in cost of well than any added cost of mudding in.

"Again, upon drilling down to a given sand underneath other sands it is not necessary to waste any gas from the shallow sands in passing through same if such sands are drilled in under a column of water or mud laden fluid. This is proved by the fact that many of the greatest oil and gas wells of the country are drilled in under such conditions in such fields as those of California, Texas, Louisiana, and Mexico under the regular rotary practice and under the practice of combination drilling by rotary or standard equipment, and very often by regular standard drilling under column of mud fluid or water. That mudding in a producing well for conservation will not injure the oil well is also proved by the fact that all oil wells drilled in by the rotary process are subject to this treatment as a matter of regular practice. It is also proved by our own practice in a much more difficult matter of building up cement cap rocks over gas formations after wells have been drilled in, and in the two such cases we attempted we have had perfect success on a much more difficult matter of handling rapidly hardening cement in contact with a producing sand than a plastic matter like mud laden fluid. These two instances were carried out in different fields in Oklahoma months after the wells were drilled in, and for the purpose of stopping great underground waste of gas, which was successfully done. These cases are exact parallel cases to what

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would be necessary in the Cushing field to now seal in the sands in present producing wells.

"It is an absolutely necessary essential of gas conservation that the gas, oil, and water encountered in sands penetrated to reach lower sands be sealed off in an efficient manner to keep the product confined in each sand in which it was found, and that there be no intercommunication between different sands behind the casings, whether water, gas, or oil sands.

"When gas sands in producing wells are confined behind the casing and brought to the surface through casing-heads, it is an absolute impossibility to prevent such gas from dissipating into previous earth formations on its way up to the casing-head. Also, it is an absolute impossibility to efficiently care for such a well and sands feeding behind the casing, as neither casings, nor water contained in the gas sand with the gas or in other communicating sands, can be efficiently removed or blown from behind the casing through a casing-head. Such wells result in enormous underground waste and also do not flow gas for possibly half the life they would have if they were drilled as separate gas wells. Any attempt to conserve the gas supply by producing through casing-heads is absolutely impractical and must result in defeat of conservation.

"No gas or oil well should produce either gas or oil from two sands at the same time, nor should the same well produce both oil and gas at the same time unless they occur in the same sand and not separated by an impervious break or streak, and it is otherwise impossible to confine one or the other product to the sand in which it is found. In all producing fields where oil and gas are found in separate sands or can be kept separated, separate wells should be drilled for producing each product.

"It is not necessary to drill as many gas wells as oil wells, as one gas well will drain as much ground as from four to six oil wells, and further drilling for gas is an unnecessary expense and economic waste.

"Such gas wells should pay large dividends on the investment on present prices of 2½ cents per thousand feet of gas sold.

"Where oil and gas occur in the same sand and cannot be separated and confined separately and must be brought to the surface together, separators should be used to separate the oil

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and gas so each product can be sold to the respective market, and preference should be given to such gas in marketing same to encourage conservation.

"Such separators would somewhat retard the flow of oil to the surface at the time being, but would extend the period of time over which the wells would flow natural before pumping would be required. Also, it would result in a saving of much of the lighter and most valuable portion of the oil which is now carried off in a fog or mist from the blow tanks by the gas allowed to escape to the atmosphere. How much this would increase the Beaume gravity of the oil, or what per cent increased production it represents, can only be determined in each field by actual practice. Another great benefit such separation would be to the oil operators would be through reducing the great amount of 'cut' oil now produced and unmarketable. This cutting is due to the agitation of oil and water by the high velocity gas passing through it. The possibility of great saving here in the field to the oil producers is so great that they should, of their own accord, welcome gas conservation, and should co-operate in putting their own industry upon a more efficient and profitable basis.

"It cannot be doubted but that gas conservation will benefit the oil producer greatly both as to efficiency of production, operation, and in effecting an influence on marketing conditions which must inure to his benefit.

"It goes without saying that common purchasing on a *pro rata* basis, subject to the umpiring of an impartial tribunal of questions arising between production and marketing (and of assuring an ample supply for the people) by the gas-pipe line companies is essential to the successful conservation of gas.

"It is not necessary or advisable to separate leasing as between oil leases or gas leases, as such separate operation by two different interests on the same lease would result in complications and litigation far greater damaging than benefiting conservation and development.

"As a general rule, it is far better to encourage leasing of oil and gas rights to the same operator, giving him the opportunity and the greater chance of making his operations a success by discovering either oil or gas, but it makes no difference from the standpoint strictly of conservation who drills the well and

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whether he has only the oil or gas right or both as long as whoever brings in the well must conserve either product.

"It is just as important to conserve the rock pressure of a well as to conserve the volume, as there can be no diminution of rock pressure without a corresponding loss in volume.

"The purpose of blowing gas from oil wells is to accomplish a greater flow of oil from the well. This is brought about in two ways. First, by the lifting tendency of gas blown at high velocity to pick the oil up and carry it to the blow tanks on the surface, a method resulting in the cutting of a great deal of oil making it unfit for market. The second way is by flowing the gas through the oil at a much lower velocity, causing the column of oil in the casing between the sand and the surface to become so charged with bubbles of gas reducing the weight of that column owing to the many void spaces in these bubbles so that the pressure of gas and oil at the bottom of the well can cause that column of oil to flow to the blow tanks in a greater volume in a given time. A third purpose is for the object of exhausting any back pressure which may exist in the wells when they have reached such a low stage of flow that it is necessary to pump them from the surface. In this case, reducing the pressure at the bottom of the well causes the oil to flow out of the rock in greater volume. Of these three methods, the first method not only reduces the flow of the oil produced and carries off from the blow tanks large quantities of the lighter parts of the oil but is of short duration owing to the enormous quantity of gas escaping to the surface and the consequent early depletion of the gas reserves. The second method is the more practical of the two in the long run, resulting in a more moderate rate of flow of the oil with the elimination of the cutting of the oil and reduction of the quantity of unmarketable product, and also because of the more moderate flow of gas from the wells the period of time which it takes to deplete the gas supply is greatly extended and therefore the period of time over which the lifting tendency of the gas is available is greatly extended, resulting in a greater period of time before pumping is necessary than by the first method. The third method is one which naturally is desired to be avoided, if possible, that is the pumping of the oil, as the output of such pumping wells is comparatively limited to a small

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amount when considering the Cushing wells owing to the limitations of the capacity of the pump. . . ."

After the hearing at Tulsa it seems that the oil operators assembled and, having been invited to do so, they thereafter filed with the Commission a paper outlining suggestions in the matter of the enforcement of the conservation law. Their statement is as follows:

"Pursuant to suggestion made by your Commission at meeting held at Tulsa on June 26th, a meeting of oil producers was held at Tulsa on June 30th for the purpose of outlining suggestions in 395.

"At the outset, the members in attendance at the meeting wish to impress upon the Commission the fact that both from a point of self-interest and a desire to co-operate with the Commission, the oil producers are desirous of preventing any unnecessary waste of gas in connection with their operations in the oil fields, and, further, to frankly admit to the Commission that in their operations for oil a certain amount of loss of gas is unavoidable. In the efforts to minimize the amount of loss of gas the oil producers are willing and anxious to adopt any means which may be found practical.

"The consensus of opinion as developed at this meeting may be embodied briefly in the following points, and is submitted to your Honorable Body as suggestions to be followed in any order you may feel called upon to make in the premises:

"First. That it is impractical to make any general order covering the various oil fields of Oklahoma. The conditions in each field being so peculiar to itself as to make any general order from an operating standpoint impractical, and to a large degree unprofitable if not impossible of performance.

"Second. Even as regards a single field, conditions vary so with the drilling of different wells that a general order will be found to work an injustice, and to be more or less impractical of enforcement in connection with continued operation of such field.

"Third. That as oil and gas are both found in the same sand in the Oklahoma fields, it has been found an impossibility to save both and at the same time successfully operate for either.

"Fourth. That even were the gas conserved in such sand it

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would be at the expense of the oil produced, for the reason that an adjoining lease might, and has in many cases, been found to be in a formation that contains little or no gas, the result being that the oil in such lease would be readily obtainable and at the same time the oil would be drained from the adjoining lease, due to the fact that the gas volume being less on the neighboring lease, the oil following the line of least resistance of necessity finds its vent in such lease.

"Fifth. That it has been found impossible to acquire a market for the gas that has necessarily been produced in excess of that used in operations in the oil fields, and were such gas by order of your Commission conserved, where it is found in any considerable quantities, an accumulation of such gas would result without any market in sight for it, nor any market in prospect, according to the best information and belief of the oil producers represented at this meeting.

"Sixth. The members of this meeting are unanimously of the belief that the waste of gas in the oil fields has been greatly exaggerated, and that if proper allowance be made for the gas that has been used in the drilling operations, the actual waste shown will be materially less than has been represented to your Commission, or has been alleged in the newspapers and publications generally on this subject; and, further, as an actual fact, oil producers are to-day short of gas in many instances for drilling purposes, and in some instances at least are using oil to supplement the supply of gas as fuel, even in the Cushing field, for actual and necessary drilling operations.

"Seventh. The meeting is of one mind as to the desirability of making all possible saving of gas, but it is the experience of producers here represented that no satisfactory method has been found to profitably operate a lease for oil purposes and at the same time save in its entirety the gas produced from such territory, where the oil and gas is found in the same sand, and where apparent prolonged waste of gas has occurred it will be found in most instances to have been on unusual occasions which have arisen due to special conditions, and which will always arise in all oil fields, and which are not susceptible to regulation by the Commission, nor which can be anticipated by the producer.

"Eighth. It is the unanimous opinion of those present, based

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on years of experience in the oil-producing business, that if the Commission will formulate an order requiring the Braden-heading of dry gas, or gas from formations which do not produce oil, such order is all that can be safely made in the premises.

"Ninth. It seems to be the unanimous opinion of all those present that the enforcement of § 5, as to the taking of gas ratably by the common purchasers of gas, is absolutely essential to any benefits to be derived from this bill. Should § 5 be eliminated or not enforced, and to regulate and enforce the balance of said bill, in the judgment of those present, it would only work to the advantage and benefit of the gas companies who own and control their pipe lines and markets, and would mean the confiscation of properties, principally oil, the total value of which would run into millions of dollars, and the general public would not be benefited for the reason that it would create a monopoly for the use and benefit of the gas companies only who own and control their own markets."

At Bartlesville, W. H. Johnson, an operator of long and successful experience appeared before the Commission and later filed a paper from which we quote as follows:

"Heretofore it has been quite frequently a general practice to drill such (wild-cat) wells through the gas sand and continue drilling until the well has either proved an oil well, dry hole, or has run into water. My experience and observation leads me to the conclusion that this gas should be closed or shut in before drilling deeper, or the hole should be drawn in and the deeper drilling done with smaller tools. This, of course, entails a waste of gas while the well is being deepened, which, in case of a very large well, would be unwise, but in case of a well of not to exceed a few million feet the deepening can be done without great inconvenience until the deep sand is tested, and then the well can be plugged below the gas sand. In case of a well of a large flow the casing can be put in, setting it on the shoulder created by using smaller tools and thus save the gas. In case of drilling down before the gas is shut in and finding oil in a deeper level or in the lower part of the sand, the well can be cased, the casing resting on the shoulder as before mentioned, and the oil can be produced inside of the smaller casing and the gas between the casings. If it is desirous to torpedo the well before the gas is

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shut off, there is no particular objection to doing that, and it has its advantages.

"I write of this process without going into further details, because by experience I know it is perfectly feasible, economical as far as the waste of gas is concerned, and the future income of the producer, and serves the principle of conservation in as inexpensive and practicable a manner as seems feasible.

"Of course this does not prevent using the mud process instead of outside casing in the walls above the gas sand. If you will permit me to express my judgment, I think the question of how the walls above the gas are to be protected should be left to the views and experience of the individual producers. It has been my judgment for a long time that it is a most wasteful practice to drill those wells through the gas sand or the gas strata of the oil-bearing sand, without reducing the hole so as to case the gas off and separate it from the oil. There is such a variety of sands that to attempt to intelligently discuss the question of saving the gas from the upper part of an oil-bearing sand in the way that we have done in this field, with perfect success, would be to make statements which experience in other sands might not bear out. Oil sands in the different pools and frequently in different parts of the same pool are so dissimilar as to make it a difficult problem, as a general rule, to arrive at; nevertheless, it is feasible to prepare to shut the gas off from anything found below the gas to a very far greater extent than is being done.

"Feeling a deep interest in your efforts, that you may accomplish the greatest amount of good, I am,

"Most respectfully yours,

"W. H. Johnson."

Some reference has heretofore been made to F. P. Fisher, whose experience as stated has been considerable. He filed with the Commission a written statement and several exhibits. His statement is as follows:

"Relative to the waste of gas in the Cushing field: This waste has continued from the very first discovery of gas in that field until the present date,—a period of approximately three years.

"During the period the extent of the waste fluctuated, increas-

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ing with the bringing in of each new sand and reached its maximum with the tapping and developing of the Bartlesville sand.

"This loss is due principally to two wastes,—one by allowing the gas to blow to the surface and escape forever; the other, by allowing the gas to escape into other earth strata and dissipate beyond recovery.

"The former loss was due to the lack of interest in gas by the oil producer who, in those days, desired to be rid of the gas to facilitate drilling and also to flow the oil from the wells by gas pressure.

"The second loss was due to a general lack of comprehension of underground wastes and to unskilled and inefficient methods of packing off the gas in the various sands:

"Also due to the difficulty of and, in a general sense, the absolute impossibility of packing off separately, within the range of casing possibilities, so many sands as occur in most of the deep wells in the field.

"By reference to the blueprint attached, it will be seen that single wells as, for instance, the 'Clover Leaf' and other wells have encountered nine sands producing either oil or gas, in reaching the Bartlesville sand.

"This is aside from several water formations penetrated and if these wells are carried down to the Mississippi lime, there are yet to be encountered the Tucker sand and the top of the Lime; both of which are productive in many fields.

"In short, wells in the Cushing field, where carried to the depth of known productive sands, will encounter as high as eleven producing sands, and, in addition, at least three or four water sands which must be shut off, making a total of as high as fifteen sands to protect.

"Unless these sands are closed off, to confine the oil and gas in the sands in which they are found, great wastage is bound to follow. It is absolutely impossible to place sufficient strings of casing in any well to protect one half the sands encountered in the Cushing wells, and, before any conservation can be attained or this waste reduced, it is necessary to apply some other system of casing or packing off of wells.

"A year or two ago the Federal government attempted to introduce 'mudding in the sands,' but, as it was a new process in

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this field, it was received with a great deal of prejudice, although very sound in principle and very successful in other fields.

"The process lacked the good will and earnest support of the Cushing producers, who did not care to undertake anything new to them unless they absolutely had to. The one element which prevented its general use was that it was introduced as 'a request from the department,' and one operator chose to try it and his neighbor chose not to try it; bringing about the attitude of indifference.

"The adoption of this process at that time would have saved the gas supply of that field for years to come. As it is, the 'casing of wells in the Cushing field is done in a haphazard manner with absolutely no thought or care toward saving the gas.'

"The blueprint exhibit No. 1 herewith will give an idea of the utter failure of the casing methods of the Cushing field toward protecting the gas sands. In fact, it could not be better cased to accomplish waste if it has been studied out for that purpose.

"By reference to this print it will be seen that all the sands, four in number, from the Layton to the Wheeler sand, are thrown together behind the casing, excluding the gas from the 8″ casing and providing a channel for communication behind the casing for the gas from the four sands mentioned; permitting the wasteful results, the equalization of gas pressures between the different sands and the dissipation or underground waste of the gas into porous formations intervening the gas sands.

"Again, the sands above the Layton sand are shut off in similar communicating manner behind the larger casings, permitting the water sands intervening to come in direct contact with these gas sands and drowning them out and wasting this gas.

"Again, some of the wells are so cased that the seal is, in many cases, above the Layton sand and, in many others, below the Layton sand, making a direct communication between the sands above and below the Layton, so higher pressure gas from below can escape through the Layton sand to the upper sands, resulting in that the gas from all sands above and including the Wheeler sand are intercommunicating and their rock pressure destroyed, resulting in large investments in compressor stations to recompress such small part of it as can be regathered. It also

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results in that, in almost every well encountering these gas deposits, the gas is exposed for dissipation into the porous formation from the Wheeler sand to near the surface of the ground, resulting in terrific permanent waste of the gas.

"The only possible solution for remedying this waste and discontinuing it lies in adopting the 'mudding in' process for sealing the gas in the sands where it is found.

"No oil is successfully producing from two sands. Almost everyone in the field is producing from only one sand, generally at the very bottom of the hole. Packing off or mudding off the gas sands higher up would in no manner whatever interfere with the value of the well as an oil producer.

"Casing off the gas from an oil well and delivering the gas to the surface through a Braden-head is but a makeshift process. It is absolutely impossible to properly care for such a well; most oil wells now producing gas from the Braden-head in this field have a greater or less column of water behind the casings and interfering with the gas production and pressure. Such wells cannot be kept in good producing condition long and are a source of great gas waste. They cannot be efficiently blown to free them of water nor can they be cleaned of any salt or caving material, while the small passage for the gas, outside the casing and between the casing and the wall, offers special conditions inducive to caving and collapse, when any larger volume of gas flows through the narrow space and cutting action of the gas commences.

"Oil and gas should not be produced from separate sands in the same well. Separate wells should be drilled to reach the gas and separate wells should be drilled for oil. This will result in the greatest earning to the producer and the greatest benefit to the people through the use of our gas and oil resources.

"It is not an expensive matter to close off by 'mudding in' the gas sands separately from the oil sands. The larger size of casing could be pulled and re-used for drilling other wells, without waiting for the wells to die before pulling the casing. This one feature of recovered casing alone will more than offset any additional cost of mudding in the wall.

"It is thoroughly proven by wide practice in all oil and gas fields that it is not necessary to drill gas wells as close as oil

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wells to drain a given field. Oil wells are commonly located from 400 to 660 feet apart, while gas wells are generally located from 1000 to 1500 feet apart; or, in other words, one oil well per ten acres is the usual practice over the country, while one gas well per forty acres is the general practice based upon the judgment of experience over all fields.

"According to this it is not necessary to drill a gas well offsetting every oil well brought in through the sands in case oil and gas are handled through separate wells. However, the maximum ratio should not exceed one gas well to four oil wells drilled. It is the usual practice to rapidly drill up the oil territory and bring all oil possible to the surface, each producer making as big a grab as possible. This results in an enormous waste of wealth through reducing prices, ruining many small operators and upsetting the industry in general, so a few large aggressive producers may have a carnage. It also results in the investment of large sums of money in storage capacity.

"The best interests of the oil producers are not attained through such exciting operations, but it is well recognized now by the leading oil operators that their earnings would have been far greater, had their business been conducted more on the basis of efficiency than the wasteful methods up to the present.

"That it is not necessary to carry on the gas business in the same way, wasting at the surface what cannot be stored, is patent to all who realize what a simple thing it is to mud in and seal off intervening gas sands.

"Two gas wells on the Hill Oil Property have produced their owners over $100,000 from the gas they produced and which sold at 2½ cents per thousand feet 2 pound gas at the wells.

"These were very profitable wells and show what can be done where the wells are drilled and handled in a businesslike manner. It does not follow, because the oil wells have drilled through and opened—say 1,000,000,000 cubic feet open flow gas—that markets must be provided for that amount. It is impossible to provide such market, and, if it was possible to build up such consumption, no fields could provide such a market for any material length of time.

"The only rational thing is to mud in all gas not available for market, and hold it back until the market can take it.

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"Mud in all gas from oil wells, prorate the output from each field and permit the tapping of gas sands only by such wells as do not encounter oil in other sands or by special gas wells drilled to the gas sands to permit prorating of gas sales, say, on acreage or volume basis.

"The number of gas wells to be drilled in an oil field on the leases of producing oil companies, for gas in excess of their own proper requirements, should be under the control of a responsible authority, having full information as to the needs of the market supplied from that field and permitting sufficient wells to be drilled to fully supply that market without reducing the *pro rata* share per well utilized to the point where the drilling of the gas wells would be unprofitable.

"It is not necessary that any more gas wells be drilled in a definite field than are necessary to efficiently supply the market and equitably prorate the sales. Anything over this number is both an economic and moral waste.

"No gas sand should be allowed to go unprotected, no matter how small the production, as the cost of mudding off is so small that there is no excuse for nonprotection against escape or injury from water in filtration.

"Many large gas fields in Oklahoma and Kansas, as Blackwell and Augusta, do not average over 1,000,000 cubic feet open flow per well when brought in, and such fields, selling gas at 3 cents to 4 cents per thousand cubic feet, are very profitable investments. Over 150 wells are drilled in those two fields at costs of $2,500 to $4,000 each.

"If it will pay to drill for gas wells of not over 1,000,000 cubic feet open flow, it would be a shame not to protect gas sands of 1,000,000 or even 300,000 cubic feet when brought in with oil wells when the cost of protecting them is but a small fraction of the cost of drilling such gas wells—say, not to exceed $300 to $500 per well.

"The income to oil men from protecting the gas sands and producing gas in separate wells should be a very profitable business for them.

"This all applies to wells where oil and gas are in separate sands or where there is a break in the sand separating the oil

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and gas, so a casing can be set in the break and the gas area mudded off.

"Where oil and gas are found in the same sands with oil and they cannot readily be kept separated and the gas confined to its stratum, then separators should be installed and the flow of the oil retarded until the gas pressure has been relieved by marketing the gas.

"Such wells should be given preference in marketing and prorating. The income from such gas sales would pay the oil operator a very handsome interest on his investment during the delay in his oil production. It would also benefit him directly in several other ways.

"Where oil and gas blow into a 'blow tank' or gathering tank on the surface of the well, the gas escapes in foggy clouds carrying off the lightest and very richest portions of the oil in quantities running up into far greater percentage of the wells' output than would be believed by anyone not experienced by actual test of this loss. The specific gravity of oil produced through gas separators is considerably lighter than oil run to a flow tank and the light oil vapors carried off by the escaping gas.

"Again, an amount of oil which will be raised to the surface by the gas flow before pumping is necessary will be far greater when the volume of gas blowing is restricted and the period over which it blows is extended. In other words, the greater efficiency of 'oil lifting to the surface' is accomplished when the gas flow is under regulation than when it is allowed to blow wild.

"By retarding the flow of gas from oil wells through keeping a back pressure sufficient to carry the gas through the gas gathering lines, the flow of oil from such oil wells is retarded. However, over the long run more oil is raised before the gas pressure is spent and in the long run the producer secures his greatest profits through conserving the gas and marketing both products.

"California type separators are very simple to construct and operate and most efficient in separating oil and gas so each product can be conserved for the market.

"In the Cushing field the waste of gas which occurred during 1913, 1914, and the first four months of 1915 is probably the most prolific waste of gas on record anywhere in the United States. There can be no doubt but that it, at times, reached to

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exceed 1,000,000,000 cubic feet daily, and, during the period mentioned, must have totaled over 200,000,000,000 cubic feet or more than ten years' supply for a population greater than the entire population of the state of Oklahoma.

"At the present time it is easily 300,000,000 feet daily, worth in the field easily $9,000 daily.

"Unless something is done to immediately stop this waste, the present developed gas reserves of the Cushing field can be but a matter of a few months.

"For the purpose of assisting in the conservation of this gas, a new compressor station involving $100,000 expenditure is now being built in that field, which will be an entire loss unless conservation is soon attained. An investment of over $2,000,000 in gas lines and stations has been made to that field within the last two years, based on confidence that prolific waste would not be tolerated. These investments must fail unless conservation is soon effected, that this large industry in Oklahoma be not crippled.

"Exhibit No. 2 is a list of gas wells in a portion of the field, showing the amount of gas developed in the different sands at that time, October 25, 1914; also indicating some 120,000,000 cubic feet of gas wasting daily from Bartlesville sands, from wells averaging 1,000,000 cubic feet, blowing daily per well, showing that wells of less than 2,000,000 cubic feet waste daily must be conserved, as the number of such wells is so great that no gas field could long survive such drain.

"This exhibit refers only to a portion of the field. For the entire field it is estimated over 300,000,000 cubic feet of Bartlesville gas was blowing at that time, aside from Wheeler, Layton, and other gas blowing. These estimates are matters of judgment of men skilled in gas measurement who are permanently in the Cushing field, and the estimates are conservative; in many instances far under the actual wastage. It is impossible to gauge wells blowing into blow tanks and estimates alone are available.

"Exhibit No. 3 shows rock pressure tests of gas wells as of close of September, 1914:

No. 4 as of close October, 1914.

No. 5 as of close November, 1914.

No. 6 as of close December, 1914.

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They do not represent all of the wells in the field; only those which were accessible to take rock pressure; many of the wells blowing open or producing oil, making it impossible to secure gaugings.

"However, the patent feature is that rock pressures existed in the Bartlesville sand as high as 900 pounds actual gauging in September, 1914, and as high as 500 pounds in the Wheeler sand, while, in May, 1915, these pressures have dropped to 150 to 155 pounds and are still declining rapidly.

"Exhibit No. 7 shows a curve of average rock pressures of the wells feeding one of the large pipe lines, indicating the rapid decline each month and especially during the development of the Bartlesville sand.

"Gas wastage to the atmosphere continued throughout the entire period, not only from wilfully blowing gas to the air, to relieve the pressure on oil sands, or to raise the oil to the surface, but the loss of gas from the shallow sands and from all sands including the Wheeler during the process of drilling was terrific and beyond all possible calculation.

"Such loss could be entirely avoided by drilling the wells through these sands under liquid or mud fluid pressure as is done in many other fields.

"Aside from the above-mentioned losses, the underground loss itself was enormous and combined must have been far in excess of a maximum of 1,000,000,000 cubic feet daily worth in the fields fully $25,000 per maximum day loss.

"Exhibit No. 8 shows a census taken of practically all wells regularly blowing gas to the surface from the Bartlesville sand only, as of March 27 and 28, 1915, and does not represent any waste from shallower sands or underground waste. This was taken at a time when most of the large blowing wells were spent and at a time when the surface waste was possibly not over one-third of its maximum. The special feature of this exhibit is that the greatest waste now going on is from wells blowing on an average less than 1,000,000,000 feet daily. The total waste here recorded is 321,000,000 daily from 464 Bartlesville sand wells wasting gas.

"The only outlook for saving the investment in gas-pipe lines and compressor stations to the Cushing field, amounting to over

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$2,000,000 built to serve over 300,000 people, lies in the effective conservation of the remaining gas supply in the fields; also the bringing in of new reservoirs at greater depths, but without conservation, this investment must be a complete failure, and the supply of gas still available for the comfort of a great population will be lost.

"These people are in no position to realize and defend their interests in this great natural resource, and must look to conservation enforced by the proper officers for their protection.

"As to the possibility of developing new reservoirs at greater depth, there are still to be developed the Tucker sand and the top of Mississippi lime, deeper than the Bartlesville sands now developed.

"In many other fields gas is found in both of these deeper sands and there is a possibility of their existing in the Cushing field. However, unless they are protected and conserved, the great number of drilling wells eager to tap the deeper sands, the small sized casings now tapping the Bartlesville sands, and the rush to drill deeper into the lower sands without casing below the Bartlesville, all presage a profligate waste of any deeper sand gas unless special regulations are enforced to bring about drilling methods which will assure conservation. If left to themselves, the oil operators will take the shortest method to reach the deeper sands, waving to the winds any care or thought for precaution to conserve the gas.

"Inasmuch as most waste is the result of inefficient casing methods, it is essential that casing into producing sands be under the supervision of government inspection, even more so than the present inspection of plugging abandoned wells or dry holes.

"It is of far greater importance that no casing be set into a producing sand without that every precaution has been taken to assure conservation and meets careful inspection, than that abandoned wells or dry holes be inspected when plugged. . . ."

Alfred J. Diescher, Esquire, to whom we have heretofore referred, in his testimony at Bartlesville, among other things, said:

"I represent the Wichita Pipe Line Company as vice president and general manager. We take gas from different fields in

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Oklahoma but principally from the Cushing field. We have had a great opportunity of studying into the loss of gas in that field on account of our operations there and also on account of the importance that that supply is to serving our customers. We have watched it for a period extending back about two and a half years. At that time the supply developed was principally in the shallower sands, the Layton and Wheeler sands; the Bartlesville had not yet been tapped, neither had the gas been developed over such a great extent of territory. The gas was not developed greatly in the northern part of the field which later proved to be one of the most prolific sections of the field. The gas developed at that time which was in the spring of 1913, it was such as to reasonably assure us of a supply for consumers for years to come. The pressures were high—600 pounds, 500 pounds—and the volumes of the wells were great, ranging from five up to thirty and forty million feet. We decided to build this line. The contract was placed for the line about the close of September, 1913, and the line was finished and ready for operation in March of 1914. The gas reserves on which the construction of that line was based were so depleted by the time the line was completed that it has been of practically no use in furnishing gas for consumption.

"The gas which was taken out of that field for this line was from areas and wells developed after the line was started. (I mention this to show the rapid depletion of that field.) The cause was the blowing of the gas to the air on the one hand, the raising of oil by means of the gas was another reason, and the third reason was that much of the gas which was not with oil and which could have been closed in by proper packing was not packed off, no real attempt was made to conserve it. It was allowed to be exhausted so as not to trouble them or interfere with oil production. In the north end of the field, the wells which came in were as large as in the south end of the field. A year ago, or rather say March and April a year ago, the pressures in the Wheeler sand were as high as between five and six hundred pounds—the supply available—the open flow—we estimated in that section at about five or six hundred million cubic feet daily; that is, the volume that would blow from the mouth of the well to the air, not the volume you could take to market use; there

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was an abundant supply as to quantity and ample pressure to have given sufficient service to an enormous number of consumers. By July of 1914, this supply was so depleted that it was at once seen there was no assurance for any great length of time that unless something was done to protect the supply the consumers were bound to be short of gas—as far as that field was concerned—within a few months. In about September—no, in the close of July, when they brought in the first Bartlesville wells, and in drilling them they penetrated through these upper sands, they paid no special attention to the upper sands in the way of protecting them or conserving the gas, with the result there was an immense depletion; not only of the gas that had been discovered in the shallower sand, but also just as great a depletion of the gas in the Bartlesville sand. The gas as measured about the first of October, 1914, ranged from as low as 450 pounds at some of the larger wells which were blowing to as high as 900 pounds of pressure of say, one-half mile to a mile from those wells, but I know of no pressure in that field of over 200 pounds."

The Bureau of Mines finds further:

"Drilling contractors are apt to be inclined to disregard the interests of the owner and the public welfare, and to devote their energies to 'making hole;' that is, to drilling to a maximum depth in the shortest time and with the least cost. Suspension of work to test the tightness of casing or to case off water or gas is not viewed favorably by the contractor, who receives during such suspension of drilling a daily sum that usually is little more than his expenses."

And again referring to natural gas, the Bureau says:

"The most economical use of the gas which comes from sands associated with the oil sands or from the oil itself is in making natural gasolene. In California, in particular this use of the gas is growing rapidly. In one case $500 worth of gasolene is made daily from the gas which comes with the 2,500 barrels of oil from a single well. A movement is now on foot in the Santa Maria fields in California to buy all of the gas now going to waste at 5 cents per 1,000 cubic feet and convert it into gasolene. Two hundred thousand feet per day, or even less, is sufficient to warrant installing a gasolene plant.

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"Both gas and oil can be saved when they flow from the same well, as is verified by the fact that this is done by a few progressive operators who use a gas trap, which separates the oil and the gas by the gravity method. The great difficulty seems to be to find a market for the gas in a new oil field which has no natural gas mains or other means of transportation at hand. It would seem that legislation might require the wells to be shut in until arrangements were made to bring gas lines to the oil wells, or until gasolene plants and other means of utilization were provided. If applied with discretion, such legislation would work no injustice to the oil producer, as his ultimate profits would be larger through the sale of gas. Some prominent gas producers with whom the writers have talked have stated that every legal and legislative means should be used to force the oil companies to save their gas, even 'casing-head gas.' They believe this can be accomplished without waste."—(Technical Paper 38, Petroleum Technology 6.)

And the Bureau further observes:

"Much combination gas, or gas rich in oil vapors, is wasted in the Mid-Continent fields, where immense quantities of gas and oil are associated. Such waste seems to be regarded by oil men as incidental and necessary in the opening of such fields as the newer ones in Oklahoma. As a rule, the operator is interested solely in producing oil from a new field, and the flow of gas is considered necessary for the production of oil. After the field has been either drained of oil or drowned by salt water, the yield of gas has so decreased that it is worthless. Therefore the operator is entirely responsible for this type of gas waste. Reasonable laws should be enacted and enforced for the preservation of as much of the gas as can be consistently saved, and ways and means devised for saving and utilizing such waste.

"In most of the fields the gas is found above the oil and in the upper layers of the productive sand. In parts of the Cleveland and Cushing areas, the gas is found about 12 feet above the top of the oil sand and is often separated from it by a thin stratum of shale. The gas should be sealed in the containing rock and conserved for future use.

"Where the gas is actually mixed with the oil, methods should be devised for collecting and holding this gas until it can be uti-

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lized. In addition, an attempt should be made to interest operators in the manufacture of gasolene from gas. At this time, when motor fuels are in such demand, much can be done toward improving the present situation."—(Technical Paper 45.)

The demand for gasolene is rapidly growing, and at this time it seems that the early use of tractor plows is not only probable, but practically assured. Gasolene is fast becoming a commodity of indispensable necessity, and this affords an additional reason for conservation of natural gas.

At the sessions of the Commission held in Okmulgee, Bartlesville, and Ardmore considerable interest was manifested. Many witnesses were heard, and operators that volunteered any information or suggestions expressed themselves as favoring conservation in this state, and also observed that heretofore there had been unnecessary waste.

The Commission held a session at Tulsa and several oil operators were present who indulged in a general informal discussion of the matter under inquiry, and afterwards held a meeting for the purpose of adopting resolutions, and a paper was filed by the Tulsa operators, which is above set out, and in said paper they say:

"It is an actual fact oil producers are to-day short of gas in many instances for drilling purposes, and in some instances at least are using oil to supplement the supply of gas as fuel, even in the Cushing field, for actual and necessary drilling operations."

This admission coming from the Cushing operators themselves is a woeful arraignment of the methods being used by them to prevent waste both open and underground. Apparently in excuse of this deplorable waste, they say:

"It has been found impossible to acquire a market for the gas that has necessarily been produced in excess of that used in operation in the oil fields, and were such gas by order of your Commission conserved, where it is found in any considerable quantities, an accumulation of said gas would result without any market in sight for it, nor any market in prospect."

The fact is that under present methods of operating the gas when once tapped wastes either by open flow above ground or dissipation under ground before pipe lines can be built to it.

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Mr. Raymond S. Blatchley, of the government service, says: "It is surprising how little is known among the oil fraternity of the value of natural gas and the possibilities of recovering both oil and gas."

This Commission does not attribute the great waste heretofore occuring in the state to any lack of knowledge on the part of operators, but rather to conditions. In this state millions of dollars have been spent for steel tankage, and oil stored therein has been lost by fire to the value of millions of dollars. Much of this oil might have as well remained in the ground until needed for commercial demands and for a price to some extent commensurate with the value thereof, but when the rich Cushing deposits were found the stakes were too great, and in the madness of their unrestrained and unregulated competition to get as much of the oil as possible the operators wasted both oil and gas. The mad rush in the Glenn Pool was about as bad. One writer speaks of that as follows:

"As one man confidently put it: 'More waste oil has run down the creeks from the famous Glenn Pool field than was ever produced in Illinois.' Such a statement, though perhaps farfetched, conveys some idea of the immense waste that has occurred in this wonderful oil pool."

It appears that in oil and gas mining operations in this state everything has been made subservient to oil; that not only the gas, but a good portion of the oil, has been sacrificed almost entirely in putting the other part of the oil on the market.

Conditions have, as suggested, been more responsible for the waste than lack of means or knowledge of means to prevent waste, but a change has taken place. On February 11, 1915, house bill No. 168 was approved, entitled: "An Act Defining and Prohibiting Waste of Crude Oil or Petroleum, Providing for the Equitable Taking of the Same from the Ground, and Conferring Authority on the Corporation Commission," etc. (1915 Session Laws, page 35.) At that time as well as at the present time, the Healdton field was in a highly congested condition, with a large potential production with market facilities for only about 20 per cent thereof.

On June 5, 1915, the Commission issued an order under said act (order No. 920, cause No. 2287) and immediately put the

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same into effect. At this time a conservation agent appointed by the Commission is in the Healdton field and the order is working admirably. Whereas, before the passage of the act some producers obtained a market and others had none,—and found pipeline facilities available for themselves, but not for others,—and were enabled to draw heavily from the common sources of supply, now actual production is restrained or held back to that part of the potential production necessary for the daily market demands, in which every operator now participates according to his *pro rata*.

With just and efficient rules and regulations competently and equitably enforced, the useless competition in production and senseless waste incident thereto will, in a large measure, abate, and with this change of condition it is reasonable to anticipate a change of methods and practices upon the part of operators in the oil and gas mining business.

Experience has shown that one well in a small pool or very few wells in any pool blowing into the air or wasting through defective casing underground will exhaust the gas area, and hence any plan adopted for the conservation of gas should be uniformly efficient. Nothing could be accomplished by the competent operation of one lease and the inefficient operation of another, and unless some plan or method of maximum efficiency can be adopted and uniformly followed, conservation as a policy might as well be abandoned and the expenditures incident thereto not incurred.

As suggested heretofore the law devolves upon the Commission the duty of promulgating rules. Since the operation of oil and gas mining leases according to state regulations is new and untried, the Commission feels justified in indulging the hope that no one will expect to find the rules and regulations perfect, but it is further hoped that the same may be effectively tried out and that by amendment, if necessary, from time to time they may be so far perfected as to accomplish good and lasting results. It is not the purpose of the Commission to arbitrarily embarrass legitimate business of any kind, nor to unreasonably interfere with the production of oil, but it is of the opinion that conservation as a policy is not only good for the public at large but will

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in time prove of great advantage to the gas operators and of still greater advantage to the oil producers.

The act of the legislature authorizing the establishment of rules and regulations for the conservation of natural gas has been to some extent discussed and copied herein.

The recent legislature passed an oil conservation measure very similar to the act under consideration, and hearings were had thereunder. Thereupon on June 5, 1915, in an order drawn by Commissioner Henshaw, the Commission established rules and regulations for the conservation of oil in the Healdton field, and in said order the validity of the act was thoroughly discussed. (See 1915 Session Laws, p. 35, and order No. 920 of the Corporation Commission.)

There seems to be no necessity for a further discussion of conservation laws.

On March 26, 1913, house bill No. 723, entitled "An Act to Regulate Corporations, Associations, and Persons engaged in the Business of Carrying Natural Gas through Pipe Lines; to Regulate Operators of Gas Wells, Regulating the Purchase of Natural Gas by Pipe Lines, and Conferring Jurisdiction upon the Corporation Commission to Enforce the Provisions of the Act," etc., was approved. (1913 Session Laws, page 166.) And on May 16, 1913, senate bill No. 130, entitled "An Act Defining Ownership of Natural Gas, Providing for the Taking of the Same, and Making It Larceny to Take Natural Gas except as Provided," was approved. (1913 Session Laws, p. 439.)

In a case brought by the Oklahoma Natural Gas Company against the State of Oklahoma, Corporation Commission, et al., and in another case brought by the Okmulgee Gas Company and Alko Oil & Gas Company v. J. E. Love, Geo. A. Henshaw et al., both of which are pending in the Federal court, the common purchaser and ratable production provisions of all the acts are involved, and in the latter case the Corporation Commission has been temporarily enjoined from enforcing the common purchaser provisions of all the acts, and likewise the ratable production provisions of the acts. But this injunction runs only in favor of the Okmulgee Gas Company and the Alko Oil & Gas Company and is as indicated only a temporary order.

In view of the fact that the Commission discussed the theory

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and validity of the conservation laws in general, in the Healdton matter (cause 2287, order No. 920) it is not considered necessary to enter into a general discussion of the law at this time.

In the pending cases referred to, briefs have been filed on behalf of the State and the Corporation Commission by the Attorney General, et al., of Oklahoma City, by Leahy & McDonald of Pawhuska, by Dale & Beirer of Guthrie, and by Wm. M. Matthews of Okmulgee. In these briefs all of the gas acts are thoroughly discussed and authorities are cited as follows:

By the Attorney General and others: Beale & Wyman, cases on Public Service Companies; Allnutt v. Inglis (1810; K. B.) 12 East, 527, 11 Revised Rep. 482; Munn v. Illinois, 94 U. S. 113, 24 L. ed. 77; People v. Budd, 117 N. Y. 1, 5 L.R.A. 559, 15 Am. St. Rep. 460, 22 N. E. 670, affirming 143 U. S. 547, 36 L. ed. 256, 4 Inters. Com. Rep. 45, 12 Sup. Ct. Rep. 468; Hale, De Portibus Maris; Interstate Commerce Commission v. Delaware, L. & W. R. Co. 220 U. S. 235, 55 L. ed. 448, 31 Sup. Ct. Rep. 392; Pipe Line Cases (United States v. Ohio Oil Co.) 234 U. S. 548, 58 L. ed. 1459, 34 Sup. Ct. Rep. 956; 2 Eddy, Combination, §§ 1054, 1205; Beale & W. Railroad Rate Regulation, § 66; Noyes, Intercorporate Relations, § 406; Hendrick, Power to Regulate Corporations, p. 325; Mr. Justice Bradley, Sinking Fund Cases, 99 U. S. 747, 25 L. ed. 511; Interstate Commerce Commission v. Baltimore & O. R. Co. 225 U. S. 326, 56 L. ed. 1107, 32 Sup. Ct. Rep. 742, Ann. Cas. 1914A, 504; Lindsley v. Natural Carbonic Gas Co. 220 U. S. 61, 55 L. ed. 369, 31 Sup. Ct. Rep. 337, Ann. Cas. 1912C, 160; Ohio Oil Co. v. Indiana, 177 U. S. 190, 44 L. ed. 729, 20 Sup. Ct. Rep. 576, 20 Mor. Min. Rep. 466; West v. Kansas Natural Gas Co. 221 U. S. 251, 55 L. ed. 724, 35 L.R.A.(N.S.) 1193, 31 Sup. Ct. Rep. 564; Kolachny v. Galbreath, 26 Okla. 772, 38 L.R.A. (N.S.) 452, 110 Pac. 902; Brown v. Spilman, 155 U. S. 665, 39 L. ed. 304, 15 Sup. Ct. Rep. 245; Brown v. Vandergrift, 80 Pa. 142; Westmoreland & C. Natural Gas Co. v. De Witt, 130 Pa. 235, 5 L.R.A. 731, 18 Atl. 724; Kansas v. Colorado, 206 U. S. 46, 51 L. ed. 956, 27 Sup. Ct. Rep. 655; 40 Cyc. "Waters" pp. 606, 815; White v. Farmers' Highline Canal & Reservoir Co. 22 Colo. 191, 31 L.R.A. 828, 43 Pac. 1028; McCarter v. Hudson Water Co. 70 N. J. Eq. 695, 14 L.R.A.(N.S.) 197, 65

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Atl. 489, affirmed in 209 U. S. 349, 52 L. ed. 828, 28 Sup. Ct. Rep. 529, 14 Ann. Cas. 560; Heilbron v. 76 Land & Water Co. 80 Cal. 189, 22 Pac. 62; Forbell v. New York, 164 N. Y. 522, 51 L.R.A. 695, 79 Am. St. Rep. 666, 58 N. E. 644; Fidelity Title & T. Co. v. Kansas Natural Gas Co. 219 Fed. 616; Noble State Bank v. Haskell, 219 U. S. 104, 55 L. ed. 112, 32 L.R.A. (N.S.) 1062, 31 Sup. Ct. Rep. 186, Ann. Cas. 1912A, 487; Gundling v. Chicago, 177 U. S. 183, 44 L. ed. 725, 20 Sup. Ct. Rep. 633; Strickley v. Highland Boy Gold Min. Co. 200 U. S. 527, 50 L. ed. 581, 26 Sup. Ct. Rep. 301, 4 Ann. Cas. 1174; Offield v. New York, N. H. & H. R. Co. 203 U. S. 372, 51 L. ed. 231, 27 Sup. Ct. Rep. 72; Clark v. Nash, 198 U. S. 361, 49 L. ed. 1085, 25 Sup. Ct. Rep. 676, 4 Ann. Cas. 1171; Bacon v. Walker, 204 U. S. 311, 51 L. ed. 499, 27 Sup. Ct. Rep. 289; United States ex rel. Atty. Gen. v. Delaware & H. Co. 213 U. S. 366, 53 L. ed. 836, 29 Sup. Ct. Rep. 527; Louisville & N. R. Co. v. Mottley, 219 U. S. 467, 55 L. ed. 297, 34 L.R.A.(N.S.) 671, 31 Sup. Ct. Rep. 265; Interstate Commerce Commission v. Chesapeake & O. R. Co. 200 U. S. 361, 50 L. ed. 515, 26 Sup. Ct. Rep. 272.

By Dale & Bierer: Ohio Oil Co. v. Indiana, 177 U. S. 210, 44 L. ed. 739, 20 Sup. Ct. Rep. 576, 20 Mor. Min. Rep. 466; Noble State Bank v. Haskell, 219 U. S. 104, 55 L. ed. 112, 32 L.R.A.(N.S.) 1062, 31 Sup. Ct. Rep. 186, Ann. Cas. 1912A, 487; Brewster v. Lanyon Zinc Co. 72 C. C. A. 213, 140 Fed. 801–809; West v. Kansas Natural Gas Co. 221 U. S. 229, 55 L. ed. 716, 35 L.R.A.(N.S.) 1193, 31 Sup. Ct. Rep. 564; Geer v. Connecticut, 161 U. S. 519–522, 40 L. ed. 793, 794, 16 Sup. Ct. Rep. 600; Frank Oil Co. v. Belleview Gas & Oil Co. 29 Okla. 719, 43 L.R.A.(N.S.) 487, 119 Pac. 260; Brown v. Skilman, 155 U. S. 665, 39 L. ed. 304, 15 Sup. Ct. Rep. 245; Kansas Natural Gas Co. v. Haskell, 172 Fed. 545; Lousiville Gas Co. v. Kentucky Heating Co. 132 Ky. 435, 111 S. W. 374; People v. New York Carbonic Acid Gas Co. 196 N. Y. 421, 90 N. E. 441; Engel v. O'Malley, 219 U. S. 128, 55 L. ed. 128, 31 Sup. Ct. Rep. 190; Purity Extract & Tonic Co. v. Lynch, 226 U. S. 192, 57 L. ed. 184, 33 Sup. Ct. Rep. 44; Booth v. Illinois, 184 U. S. 425, 46 L. ed. 623, 22 Sup. Ct. Rep. 425; New York ex rel. Silz v. Hesterberg, 211 U. S. 31, 53 L. ed.

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75, 29 Sup. Ct. Rep. 10; Standard Oil Co. v. United States, 221 U. S. 1, 55 L. ed. 619, 34 L.R.A.(N.S.) 834, 31 Sup. Ct. Rep. 502, Ann. Cas. 1912D, 734; Weems S. B. Co. v. People's S. B. Co. 214 U. S. 345, 53 L. ed. 1024, 29 Sup. Ct. Rep. 661, 16 Ann. Cas. 1222; Otis Co. v. Ludlow Mfg. Co. 201 U. S. 140, 50 L. ed. 696, 26 Sup. Ct. Rep. 353; Schmidinger v. Chicago, 226 U. S. 578, 57 L. ed. 364, 33 Sup. Ct. Rep. 182, Ann. Cas. 1914B, 284; Lindsley v. Natural Carbonic Gas Co. 220 U. S. 61, 55 L. ed. 369, 31 Sup. Ct. Rep. 337, Ann. Cas. 1912C, 160; Jamieson v. Indiana Natural Gas & Oil Co. 128 Ind. 555, 12 L.R.A. 652, 3 Inters. Com. Rep. 613, 28 N. E. 76; Townsend v. State, 147 Ind. 624, 37 L.R.A. 294, 62 Am. St. Rep. 477, 47 N. E. 19; Southwestern Oil Co. v. Texas, 217 U. S. 114, 54 L. ed. 688, 30 Sup. Ct. Rep. 496; Quong Wing v. Kirkendall, 223 U. S. 59, 56 L. ed. 350, 32 Sup. Ct. Rep. 192; American Sugar Ref. Co. v. Louisiana, 179 U. S. 89, 45 L. ed. 102, 21 Sup. Ct. Rep. 43; Magoun v. Illinois Trust & Sav. Bank, 170 U. S. 283, 42 L. ed. 1037, 18 Sup. Ct. Rep. 594; Central Lumber Co. v. South Dakota, 226 U. S. 157, 57 L. ed. 164, 33 Sup. Ct. Rep. 66; Selover, B. & Co. v. Walsh, 226 U. S. 112, 57 L. ed. 146, 33 Sup. Ct. Rep. 69; Toyota v. Hawaii, 226 U. S. 185, 57 L. ed. 181, 33 Sup. Ct. Rep. 47; Hoke v. United States, 227 U. S. 308, 57 L. ed. 523, 43 L.R.A.(N.S.) 906, 33 Sup. Ct. Rep. 281, Ann. Cas. 1913E, 905; Diamond Glue Co. v. United States Glue Co. 187 U. S. 611, 47 L. ed. 328, 23 Sup. Ct. Rep. 206.

By Leahy & MacDonald: Rev. Laws, Anno. (Okla.) 1910, § 1211; Hamilton Gaslight & Coke Co. v. Hamilton, 146 U. S. 258, 36 L. ed. 963, 13 Sup. Ct. Rep. 90; Munn v. Illinois, 94 U. S. 113, 24 L. ed. 77; Louisville Gas Co. v. Kentucky Heating Co. 117 Ky. 71, 70 L.R.A. 558, 111 Am. St. Rep. 225, 77 S. W. 368, 4 Ann. Cas. 355; Manufacturers' Gas & Oil Co. v. Indiana Natural Gas & Oil Co. 155 Ind. 461, 50 L.R.A. 768, 57 N. E. 912, 20 Mor. Min. Rep. 672; Jamieson v. Indiana Natural Gas & Oil Co. 128 Ind. 555, 12 L.R.A. 652, 3 Inters. Com. Rep. 613, 28 N. E. 76; Del Monte Min. & Mill. Co. v. Last Chance Min. & Mill. Co. 171 U. S. 55, 43 L. ed. 72, 18 Sup. Ct. Rep. 895, 19 Mor. Min. Rep. 370; Hague v. Wheeler, 157 Pa. 324, 22 L.R.A. 141, 37 Am. St. Rep. 736, 27 Atl. 714; Ohio Oil Co. v. Indiana, 177 U. S. 190, 44 L. ed. 729, 20 Sup.

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Ct. Rep. 576, 20 Mor. Min. Rep. 466; West v. Kentucky Natural Gas Co. 221 U. S. 251, 55 L. ed. 725, 35 L.R.A.(N.S.) 1193, 31 Sup. Ct. Rep. 564; Pipe Line Cases (United States v. Ohio Oil Co.) 234 U. S. 548, 58 L. ed. 1459, 34 Sup. Ct. Rep. 956.

By William M. Matthews:

The Carr gas bill and the larceny act do not deprive complainants of their property without due process of law.

Citations supporting above contention:

State v. Ohio Oil Co. 150 Ind. 21, 47 L.R.A. 627, 49 N. E. 809; Lindsley v. Natural Carbonic Gas Co. 220 U. S. 61, 55 L. ed. 369, 31 Sup. Ct. Rep. 337, Ann. Cas. 1912C, 160; West v. Kansas Natural Gas Co. 221 U. S. 229, 55 L. ed. 716, 35 L.R.A.(N.S.) 1193, 31 Sup. Ct. Rep. 564; Frank Oil Co. v. Belleview Gas & Oil Co. 29 Okla. 719, 43 L.R.A.(N.S.) 487, 119 Pac. 260.

The acts in question are but an application of the common-law principle requiring everyone to use his own property so as not to destroy or injure the property of his neighbor.

Citations supporting above contention:

Com. v. Tewksbury, 11 Met. 55; Com. v. Trent, 117 Ky. 34, 77 S. W. 390, 4 Ann. Cas. 209; People v. New York Carbonic Acid Gas Co. 196 N. Y. 421, 90 N. E. 441; Hague v. Wheeler, 157 Pa. 324, 22 L.R.A. 141, 37 Am. St. Rep. 736, 27 Atl. 714; Katz v. Walkinshaw, 141 Cal. 116, 64 L.R.A. 236, 99 Am. St. Rep. 35, 74 Pac. 766, 70 Pac. 663; 26 Harvard L. Rev. p. 1.

The Carr gas bill and the larceny act do not destroy complainant's liberty of contract in violation of the 14th Amendment of the Federal Constitution.

Citations supporting above contention:

Chicago, B. & Q. R. Co. v. McGuire, 219 U. S. 549, 55 L. ed. 328, 31 Sup. Ct. Rep. 259; Chicago, B. & Q. R. Co. v. Illinois, 200 U. S. 561, 50 L. ed. 596, 26 Sup. Ct. Rep. 341, 4 Ann. Cas. 1175; Noble State Bank v. Haskell, 219 U. S. 104, 55 L. ed. 112, 32 L.R.A.(N.S.) 1062, 31 Sup. Ct. Rep. 186, Ann. Cas. 1912A, 487; Erie R. Co. v. Williams, 233 U. S. 685, 58 L. ed. 1155, 51 L.R.A.(N.S.) 1097, 34 Sup. Ct. Rep. 761; Schmidinger v. Chicago, 226 U. S. 578, 57 L. ed. 364,

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33 Sup. Ct. Rep. 182, Ann. Cas. 1914B, 284; United States v. Trans-Missouri Freight Asso. 166 U. S. 290, 41 L. ed. 1007, 17 Sup. Ct. Rep. 540; Booth v. Illinois, 184 U. S. 425, 46 L. ed. 623, 22 Sup. Ct. Rep. 425; Patterson v. The Eudore, 190 U. S. 169, 47 L. ed. 1002, 23 Sup. Ct. Rep. 821; Mutual Loan Co. v. Martell, 222 U. S. 225, 56 L. ed. 175, 32 Sup. Ct. Rep. 74, Ann. Cas. 1913B, 529; McLean v. Arkansas, 211 U. S. 539, 53 L. ed. 315, 29 Sup. Ct. Rep. 206.

The penalties provided for by the Carr gas bill and the larceny act do not violate the 14th Amendment of the Federal Constitution by depriving complainants of the equal protection of the law.

Citations supporting above contention:

Southwestern Oil Co. v. Texas, 217 U. S. 114, 54 L. ed. 688, 30 Sup. Ct. Rep. 496; Wadley Southern R. Co. v. Georgia, 235 U. S. 651, 59 L. ed. 405, P.U.R.1915A, 106, 35 Sup. Ct. Rep. 214.

The Commission has been advised that all of the companies handling gas to any considerable extent, as purchasers and distributors, have acknowledged the justice and wisdom of the common purchaser and ratable production provisions of the various acts referred to, and that they intend to regulate their transactions accordingly. This understanding, however, does not include the Okmulgee Gas Company and the Alko Oil & Gas Company.

The Corporation Commission pursuant to house bill No. 395, having held hearings and made investigations in accordance with the provisions thereof in addition to the general findings above embodied herein, now makes the following definite findings of fact:

(1) The state of Oklahoma contains extensive deposits of natural gas; that the gas fields so far discovered and developed lie principally in the eastern part of the state, disconnected fields being found scattered throughout that portion of the state formerly comprised by the Indian Territory and the Osage Nation.

(2) That the principal gas fields discovered in the state are the Bartlesville field, Copan field, Hogshooter field, California Creek field, Nowata fields, Collinsville-Owassa field, Alluwe-

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Chelsea fields, Tulsa fields, Muskogee fields, Glenn Pool field, Henryetta field, Okmulgee fields, Morris field, Wheeler-Healdton fields, Ada field, Ponca field, Poteau field, Holdenville field, Bald Hill field, Schulter field, Osage fields, Cleveland field and Cushing field, and Blackwell field.

(3) That in practically all of the oil fields of the state gas exists, and that in many fields operated primarily for oil gas is found in one or more separate sands and also in the productive oil sand.

(4) That many of the fields above mentioned, and likewise other smaller fields not included in the above enumeration, have been completely exhausted while the entire remainder of all gas fields in the state so far discovered and opened up have been greatly depleted; and that the exhaustion of a part of the gas fields of the state and the depletion of the remainder thereof has been caused more by waste than by use or utilization.

(5) That in the past 80 per cent of the gas opened up in this state has gone to waste and that at present the daily waste, conservatively estimated, is 200,000,000 cubic feet.

(6) That by proper effort upon the part of the owners and operators of oil and gas property in the state the waste of gas can be largely prevented.

(7) That unless competent means are adopted and persistently enforced to conserve the natural gas resources of the state, the same, so far as discovered at present, will soon be so greatly depleted as to be of little further use or value.

(8) That in this state many cities and towns are connected with pipe lines to the gas fields thereof and depend upon the gas supply almost solely for fuel; that numerous and large investments have been made for the utilization of gas in the hope of a continuous supply for years to come.

(9) That waste of gas in this state has been enormous; that the Commission has no sufficient evidence before it upon which to make any estimate of the total amount of gas wasted from the discovery of gas therein up to the present time, nor of the waste in any particular field, except perhaps the Cushing field, but that in said field the waste at present approximates 200,000,000 cubic feet per day and has reached as high as 500,000,000

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cubic feet daily, and that the total waste in said field alone is in excess of 200,000,000,000 cubic feet.

(10) That when the great waste of gas in the Glenn Pool field was going on, competent authorities, considering this in connection with waste in other fields theretofore discovered and developed, estimated the waste at that time at approximately 250,000,000 cubic feet per day.

(11) That no real effort has ever been made by oil operators in this state for the conservation of the natural gas resources thereof, and that the method and means for holding gas in place, after the discovery thereof, for future use have been inefficient and incompetently applied.

(12) The Commission is of the opinion that gas of a less quantity than an unrestricted flow of 2,000,000 cubic feet per day (twenty-four hours) is a commercial quantity and that all gas sands should be protected.

Wherefore, the premises considered and the Commission being fully advised, it is considered, ordered, and adjudged that the following rules and regulations be and are hereby established:

1. Natural gas shall not be produced in the state of Oklahoma in such manner and under such conditions as to constitute waste. (§ 1, H. B. No. 395.)

2. The term "waste," as above used, in addition to its ordinary meaning, shall include (a) escape of natural gas in commercial quantities into the open air, (b) the intentional drowning with water of a gas stratum capable of producing gas in commercial quantities, (c) underground waste, (d) the permitting of any natural gas well to wastefully burn, and (e) the wasteful utilization of such gas. (§ 2, H. B. No. 395.)

3. Whenever natural gas in commercial quantities or a gas bearing stratum known to contain natural gas in such quantities is encountered in any well drilled for oil or gas in this state, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste, and all such strata shall be adequately protected from infiltrating waters. (§ 3, H. B. No. 395.)

4. Any gas stratum showing a well-defined gas sand and producing gas shall be considered capable of producing gas in com-

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mercial quantities, and any gas coming from such a stratum or sand shall be considered a commercial quantity, and such stratum or sand shall be protected the same as if it produced gas in excess of 2,000,000 cubic feet per day of twenty-four hours. (§ 3, H. B. No. 395.)

5. Whenever the full production from any common source of supply of natural gas in this state is in excess of the market demands, then any person, firm, or corporation having the right to drill into and produce gas from any such common source of supply may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm, or corporation bears to the total natural flow of such common source of supply having due regard to the acreage drained by each well, so as to prevent any such person, firm, or corporation securing any unfair proportion of the gas therefrom; provided, that the Corporation Commission may, by proper order, permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. (§ 4, H. B. No. 395.) (This rule shall not apply to parties heretofore enjoining the Corporation Commission from enforcing said section and amendment, nor to parties owning or operating lands or leases adjacent to any oil or gas property being operated by them.)

6. Every person, firm, or corporation now or hereafter engaged in the business of purchasing and selling natural gas in this state shall be a common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines, without discrimination in favor of one producer as against another, or in favor of any one source of supply as against another save as authorized by the Corporation Commission after due notice and hearing; but if any such person, firm, or corporation shall be unable to purchase all the gas so offered, then it shall purchase natural gas from each producer ratably. (§ 5, H. B. No. 395.) (This rule shall not apply to parties heretofore enjoining the Corporation Commission from enforcing said section and amendment, nor to parties owning or operating lands or leases adjacent to any oil or gas property being operated by them.)

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7. No common purchaser shall discriminate between like grades and pressures of natural gas, or in favor of its own production, or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion such production bears to the total production available for marketing. (§ 5, H. B. No. 395.) (This rule shall not apply to parties heretofore enjoining the Corporation Commission from enforcing said section, nor to parties owning or operating lands or leases adjacent to any oil or gas property being operated by them.)

8. All gas produced from the deposits of this state when sold shall be measured by meter, and the Corporation Commission shall, upon notice and hearing, relieve any common purchaser from purchasing gas of an inferior quality or grade, and the Commission shall from time to time make such regulations for delivery, metering, and equitable purchasing and taking as conditions may necessitate. (§ 5, H. B. No. 395.)

9. The Corporation Commission shall, as occasion arises, prescribe rules and regulations for the determination of the natural flow of any well or wells in this state, and shall regulate the taking of natural gas from any and all common sources of supply within the state so as to prevent waste, protect the interests of the public, and of all those having a right to produce therefrom, and shall prevent unreasonable discrimination in favor of any one common source of supply as against another. (§ 4, H. B. No. 395.)

10. Before any person, firm, or corporation shall have, possess, enjoy, or exercise the right of eminent domain, right of way, right to locate, maintain, construct, or operate pipe lines, fixtures, or equipments belonging thereto or used in connection therewith, for the carrying or transportation of natural gas, whether for hire or otherwise, or shall have the right to engage in the business of purchasing, piping, or transporting natural gas, as a public service, or otherwise, such person, firm, or corporation shall file in the office of the Corporation Com-

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mission a proper and explicit authorized acceptance of the provisions of the law. (§ 9, H. B. No. 395.)

11. All conservation agents of the Corporation Commission are directed to inquire into the matter of the performance of and compliance with the foregoing rule (No. 10), and to prevent the transportation of gas by any person, firm, or corporation found not to have complied with said rule. (§ 8, H. B. No. 395.)

12. All conservation agents appointed by this Commission shall co-operate with and invite the co-operation of the chief mine inspector of this state. (§ 10 of H. B. No. 395.)

13. Before commencing to drill a well, a separate slush pit or sump hole shall be constructed by the owner, operator, or contractor for the reception of all pumpings from clay or soft shale formations, in order to have the same on hand for the making of mud-laden fluid.

14. All dry or abandoned wells, in addition to being plugged under the supervision of the mine inspector, shall be filled to the surface with mud-laden fluid of maximum density under supervision of the Corporation Commission or its conservation agent. Fresh water, whether above or below the surface, shall be protected from pollution.

15. Before any well is begun in any field where it is not known that high pressure does not exist, proper anchorage shall be laid, so that the control casing head may be used on the inner string of casing at all times, and this type of casing head shall be kept in constant use unless it is known from previous experience and operations on wells adjacent to the one being drilled that high pressure does not exist or will not be encountered therein.

16. No well shall be permitted to produce both oil and gas from different strata unless it be in such manner as to prevent waste of any character to either product. Therefore, if a stratum should be encountered bearing gas, and the owner, operator, or contractor should go deeper in search for other gas or oil bearing sands, the stratum first penetrated, and likewise each and every sand in turn, shall be closed separately, and if it is not wanted for immediate use, it shall be securely shut in so as to prevent waste, either open or underground.

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17. No well shall be drilled through or below any oil, gas, or water stratum without sealing off such stratum or the contents thereof, after passing through the sand, either by the mud-laden fluid process or by casing and packers, regardless of volume or thickness of sand.

18. No gas sand or stratum upon being penetrated shall be drilled or left open more than three days without the application of mud-laden fluid to prevent the escape of gas while further drilling in or through such sand or stratum. (§ 3 (d) H. B. No. 395.)

19. No gas found in the upper part of a level or sand which can be separated from the oil in the lower part of the same sand or in a lower or different sand shall be allowed or used to flow oil to the surface; and all gas, so far as it is possible to do so, shall be separated from the oil and securely protected.

20. Where oil and gas are found in the same stratum, and it is impossible to separate the one from the other, the operator shall, upon being so ordered by the Corporation Commission, install a separating device of approved type, which shall be kept in place and used as long as necessity therefor exists, and after being installed such device shall not be removed nor the use thereof discontinued without the consent of the Corporation Commission.

21. No gas well shall be permitted to produce gas from different levels, sands, or strata at the same time through the same string of casing (§ 3, H. B. 395), and when gas upon being found is not needed for immediate use, the same shall be confined in its original stratum until such time as the same can be produced and utilized without waste (§ 3, H. B. No. 395), and, in confining gas to its original place, the mud-laden fluid process shall be used unless the character of the formation involved is sufficiently ascertained and understood to know that the casing and packer method with Braden-head attachment can be safely applied and competently used, and in the use of the casing, packing, and Braden-head method, separate strings of casing shall be run to each sand, and the application of the latter method in preference to the former shall not be made without notice to and consent of the Corporation Commission.

22. The future installation of vacuum pumps or other devices

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for the purpose of putting a vacuum on any gas or oil bearing stratum is prohibited, provided that any operator desiring to install such apparatus may, upon notice to adjacent lease owners or operators, apply to the Commission for permission; and in the matter of vacuum pumps heretofore installed, the use of same is authorized unless specially discontinued by order of the Commission upon notice and hearing.

23. No outside casing from any oil or gas well in an unexhausted gas field shall be pulled without first flooding the well with mud-laden fluid behind the inside string of casing, after unseating the casing, and as casing is withdrawn, well shall be kept full to top with said mud-laden fluid and same shall be left in the hole.

24. When necessary (or in any event when ordered by the Corporation Commission) to seal off any oil, gas, or water sand, casing shall be seated in mud-laden fluid; and concerning wells already drilled, the operator shall, upon the order of the Corporation Commission, raise any string or strings of casing and reseat them in mud-laden fluid when it is thought advisable to do so in order to avoid existing underground waste, pollution, or infiltration.

25. The owner or operator shall, upon the completion of any well, file with the Corporation Commission a complete record or log of the same, duly signed and sworn to, upon blanks to be furnished by the Commission upon application; and upon plugging any well for any cause whatsoever, a complete record of the plugging thereof shall be made out and duly verified on blanks to be furnished by the Commission.

26. All oil and gas operators shall, between the first and 10th day of each calendar month, take a gauge of the volume and rock pressure of all wells producing natural gas, and shall forthwith report to the Corporation Commission on gauge blanks furnished by the Commission.

27. When the gas from any well is being used, the flow or production thereof shall be restrained to 25 per cent of the potential capacity of the same; that is to say, in any day (twenty-four hours) the well shall not be permitted to flow or produce more than one fourth of the potential capacity thereof, as shown by the last monthly gauge.

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28. All conservation agents of the Commission shall assist in the enforcement of these rules, and shall immediately notify the Commission upon observance of any infraction thereof.

This order to be in full force and effect on and after September 1, 1915.

Corporation Commission, J. E. Love, Chairman, W. D. Humphrey, Commissioner, Geo. A. Henshaw, Commissioner.

ARIZONA CORPORATION COMMISSION.

IN RE DOUGLAS GAS CORPORATION.

[Docket No. 166.]

Rates — Gas — Municipal power to fix in franchise.

1. A stipulation in a municipal franchise limiting the price to be charged for gas furnished to private consumers is invalid in the absence of express authority empowering the municipality to regulate rates.

Rates — Gas — Minimum bills — Municipal franchise.

2. A minimum monthly charge of 75 cents for small consumers of gas was authorized by the Commission notwithstanding a municipal franchise provided that a uniform charge for gas not to exceed $1.50 per thousand feet should be made and that a minimum charge of 75 cents may bring about a different rate to small consumers, it appearing that municipal corporations were not authorized to regulate rates of public service corporations.

[September 23, 1915.]

APPLICATION of the Douglas Gas Corporation for an order authorizing it to make and collect a minimum monthly charge of $1 from consumers of gas using less than 667 cubic feet per month; order authorizing a minimum monthly charge of 75 cents from all consumers using less gas than, at its regular rate, would yield to the company that amount.

Appearances: Cass & Sames for petitioner; D. A. Richardson for city of Douglas.

Cole, Commissioner: This action is brought by petition of the Douglas Gas Corporation, alleging in substance that it is, and has been for more than seven years, engaged in the manufacture and sale of gas for illuminating and fuel purposes to

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residents of the city of Douglas; that ever since it commenced to do business as aforesaid, it has sold its gas to its consumers at the rate of $1.50 per thousand cubic feet; that many of its consumers use a very small quantity of such commodity, and in some cases, no gas at all is used; that the petitioner is compelled to install, keep in repair the meters, and be at all times in readiness to serve such consumers of gas, and that the same meter readings, bookkeeping, billing, and collection expenses apply to those using such small quantity of gas as apply to the heavy users thereof.

Petitioner prays for an order authorizing it to charge a minimum monthly bill of $1 from all consumers using less gas during the month than would, at the rate of $1.50 per thousand cubic feet, yield to the petitioner the sum of $1, to which petition the city of Douglas, through its council, answers, alleging that petitioner is operating under and by virtue of a franchise granted by said city, which provides that a uniform charge for gas, not to exceed $1.50 per thousand cubic feet, may be made; that to grant said application may bring about a different rate to small consumers, and in some cases may result in a charge in excess of $1.50 per thousand cubic feet, which would be in violation of the terms of said franchise.

The issues having been thus joined, the case came on legally for hearing before the Commission, after which briefs were filed. The Commission finds the facts to be as follows:

1. On October 3, 1905, a franchise was granted by the city of Douglas to H. W. Hamaker and others, authorizing them to construct and operate gasworks, lay gas pipes in the streets and alleys of said city.

2. That the franchise above mentioned was duly assigned to the Douglas Gas Corporation, which constructed such gas plant, and has been, since 1906, engaged in the manufacture and sale of gas to the residents of the city of Douglas, under the provisions thereof.

3. That § 3 of said franchise provides as follows:

"There shall be a uniform charge per thousand feet of gas, which charge shall not exceed the sum of $1.50 per thousand feet. The amount of gas shall be determined by the use of gas meters or some other proper and equitable method of measuring gas."

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4. Douglas Gas Corporation has never charged in excess of such rates, and has exacted no minimum monthly bill from those customers using no gas, or a small amount thereof.

[1] The Commission has been very cautious in this case to ascertain the equities in the premises, to the end that no order should be made that would abrogate, or tend to abrogate, a lawful contract.

Docket No. 125, Tempe v. Mountain States Teleph. & Teleg. Co. P.U.R.1915D, 716, was a case in which, by franchise, the incorporated town of Tempe attempted to specify the rate to be charged for telephones within its corporate limits. The franchise in that case also stipulated that a certain number of free telephones should be installed for the use of certain officers in said town. This Commission, in passing upon the legality of the provisions of said franchise regulating and specifying the rates to be charged, said: "We find that no such power as would be necessary to regulate the rates of such service corporations within its borders was ever delegated by the legislature of the territory of Arizona to the town of Tempe."

The same rule will apply in this case. The legislature of the state or territory is vested with power to regulate the rates of public service corporations, unless that power is delegated to some other department of the state government. The franchise authorizing the construction and operation of the gas plant owned by petitioner was granted by the city of Douglas while Arizona was under a territorial form of government. At that time the power to regulate rates of public service corporations was vested in the territorial legislature. We are unable to find in any act of said legislature where this power was ever delegated to the city council of the city of Douglas. It therefore follows that any attempt by the city of Douglas to regulate the rates of public service corporations within its limits was without authority of law.

[2] The necessity of charging a reasonable minimum monthly bill to consumers who use little or no gas or electricity in any one month is recognized generally by regulatory Commissions throughout the country. In the case of Meek v. Consumers' Electric Light & P. Co. P.U.R.1915A, 981, the Missouri Public Service Commission said: "It, however, appears to the Com-

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mission as reasonable to allow defendant to charge a reasonable minimum monthly bill to consumers who use little or no electricity in any one month, otherwise, the other consumers would have to pay the cost of serving the minimum consumers. Such a minimum monthly bill should be reasonable and uniformly applied to the consumers of the several classes, and should be based on the average cost of serving the consumers paying the minimum bill."

The Wisconsin Railroad Commission, in Re Ladysmith Lighting Co. P.U.R.1915A, 1065, speaking along the same lines, said: "The minimum charge covers certain items in the operating expense of the plants, which bear little or no relation to the current sold. Such expenses vary with the number of consumers, since they are incurred through the customer being connected with the plant, and specific expenses being incurred on his account. The expense of reading meters, maintaining meters, delivering bills, and carrying the customers' accounts, are expenses which fall in this category. When no minimum charge is made, the company incurs expenses for those customers who pay little or nothing to the company, and when such costs are not borne by the consumers for whom they are incurred, they invariably are saddled upon other consumers, and are, therefore, in a sense discriminatory."

The city of Douglas contends, however, in its brief that the petitioner should only be entitled to earn a reasonable and fair rate of return upon its investment, and if this application is granted, the earnings of the company would be increased, and should result in a corresponding reduction to other consumers. This contention is true if the revenues of the company are sufficient to yield a fair and reasonable rate of return. The Commission, in this case, has not placed a value upon the properties used and useful of the Douglas Gas Corporation, nor made a study of its operating expenses and revenues, and until this has been done, it cannot pass upon the reasonableness of the rates charged to the consumers in the city of Douglas. We are of the opinion, however, that the petitioner should be permitted to charge a reasonable minimum monthly bill from all customers consuming a small quantity of gas. We are of the opinion, however, that under the conditions that exist in Douglas, 75 cents

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would be a reasonable monthly minimum bill, and that this minimum should continue until such time as the Commission may, upon complaint or otherwise, place a value upon the properties of petitioner and adjust the rates charged to its consumers in the city of Douglas.

It is therefore *ordered* that the Douglas Gas Corporation be, and the same is hereby, permitted to charge and collect the sum of 75 cents as a minimum monthly bill from all customers using less gas than, at its regular rate, would yield to the company that amount.

By order of the Arizona Corporation Commission.

Note.—Rates for gas.

In Re Union Heat, Light & P. Co. No. 1098, May 7, 1915, the Indiana Public Service Commission found that a rate of 56 cents per thousand cubic feet for natural gas furnished at Union City was inadequate and insufficient, and established a rate of 75 cents per thousand or fractional part thereof for the first 5,000 cubic feet of gas, with a minimum charge therefor of $1, 55 cents per thousand for the next 3,000 feet of gas, and 40 cents per thousand for all over 8,000 cubic feet of gas, effective June 1, 1915.

In Re Citizens' Gas & Oil Min. Co. No. 1398, April 9, 1915, the Indiana Public Service Commission approved the following rates for natural or artificial gas to be furnished to patrons in the city of Portland and adjacent thereto; $1 for the first 1,000 cubic feet of gas or fractional part thereof supplied to one consumer in any month, and 10 cents for each 100 cubic feet in excess of the first 1,000 cubic feet, effective September 1, 1915.

In Sirard v. Pacific Gas & Electric Co. Case No. 544, Decision No. 2460, June 7, 1915, the California Railroad Commission found that the following rate charged for artificial gas in the city of San Rafael and neighboring towns was reasonable: For the first 5,000 cubic feet per month $1.50 per thousand cubic feet; for the next 5,000 cubic feet per month $1 for 1,000 cubic feet; for all over 10,000 cubic feet per month 80 cents per thousand cubic feet, minimum 50 cents per month per meter.

In Re Seashore Gas Co. June 8, 1915, the New Jersey Board of Public Utility Commissioners found that $1.50 a thousand cubic feet was a reasonable price for gas at Sea Isle City.

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MASSACHUSETTS PUBLIC SERVICE COMMISSION.

THE STOCK TICKER CASE.

[P. S. C. 1084.]

Public utilities — Stock ticker quotations — Public service.

1. Telegraph companies which buy from the New York Stock Exchange the right to furnish stock quotations by ticker service or otherwise at retail to subscribers in a city, which service cannot be furnished without the special privilege of using the public ways for the lines and cables essential therefor are engaged in furnishing and rendering a service for public use, and are subject to the jurisdiction of the Public Service Commission under § 2, chap. 784, of the Massachusetts Acts of 1913.

Discrimination — "Ticker" service — Effect of contract giving exchange right to approve subscribers.

2. The mere fact that a contract by which telephone companies buy from the New York Stock Exchange the right to furnish stock quotations at retail to subscribers in a city contains a provision giving the exchange the right of approval of applicants for such service, in order to prevent an improper and unlawful use thereof, does not, in the absence of evidence of such unlawful purpose, justify the companies in refusing service to one who has failed to obtain the approval of the exchange.

Evidence — Presumption of good faith — Denial of stock quotation service.

3. A petition for stock quotation service from telegraph companies by one who has been refused such service because the New York Stock Exchange has not approved his application to the telegraph companies therefor under the terms of a contract between the companies and the exchange reserving such right of approval to the latter, in order to prevent the unlawful or improper use of quotations, will not, in the absence of evidence that the quotations are desired for an unlawful purpose, be denied on the mere assumption that the exchange in disapproving such application acted in good faith.

Service — Telegraph — Stock quotations — Jurisdiction of Commission.

4. Jurisdiction of the Massachusetts Public Service Commission over a proceeding to compel telegraph companies to furnish stock quotations from the New York Stock Exchange to an applicant therefor cannot be denied on the theory that the subject-matter of the petition is within the sole jurisdiction of the Interstate Commerce Commission under the acts of Congress, since the jurisdiction of Congress ceases when the quotations are delivered in the offices of the telegraph company in Massachusetts.

Commerce — Interstate — Stock quotations — Jurisdiction of state Commissions.

5. In the absence of any specific action by Congress or the Inter-

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state Commerce Commission, the Massachusetts Public Service Commission has at least concurrent power to remove discrimination in stock quotation service by telegraph companies, assuming that such service constitutes interstate commerce.

Discrimination — Stock quotation service — Duty of companies.

6. Telegraph companies furnishing or supplying to any customer in Boston the quotations of the New York Stock Exchange by means of ticker or "stock telegraph system" must furnish or supply them without unjust and unreasonable discrimination to all customers within the district or districts supplied by their respective services who will comply with all lawful regulations connected with such service, and who desire such quotations for lawful and proper use.

[September 7, 1915.]

PETITION by Calvin H. Foster concerning inability to obtain ticker service from the Gold & Stock Telegraph Company and the United Telegram Company; refusal to furnish such service held an unjust and unlawful discrimination and ordered removed.

Appearances: P. H. Kelley and J. L. McLean for Calvin H. Foster; Arthur Lord for the Western Union Telegraph Company, lessee of the Gold & Stock Telegraph Company; C. F. Parker for the United Telegram Company.

By the Commission: This petition was filed on March 4, 1915. The petitioner asks the Commission to order the respondents, one or both of them, to install a "ticker" or "tickers" in his office in Boston and to furnish him with the continuous quotations of the New York Stock Exchange in the same manner and for the same price as the respondents furnish them to others. A public hearing was held on April 21, 1915.

The respondents filed separate answers (the Western Union Telegraph Company, as lessee, answering for the Gold & Stock Telegraph Company), and both ask that the petition be dismissed for the reasons,—

First, that the Commission is without jurisdiction over the subject-matter of the petition, the same being within the sole jurisdiction of the Interstate Commerce Commission under the acts of Congress.

Second, that the respondents have no legal right to deliver the quotations desired to persons other than those approved by the New York Stock Exchange, as provided in the contract which each of the respondents has with said exchange.

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In his petition Mr. Foster alleges that he has been engaged continuously in the stock brokerage business in Boston for about twenty-five years; that during all that time until the latter part of December, 1914, he had tickers furnishing him with the quotations of both the New York and the Boston stock exchanges; that in December, 1914, the tickers furnishing the New York quotations were removed; that he has been unable since then to secure this service; that the respondents have stated that they will not furnish the service unless the application is approved by the committee on quotations of the New York Stock Exchange; that he has appeared before said committee in New York on two separate occasions and has given full particulars in regard to his business, answering every question asked; that, so far as he knows, said committee has not yet taken action on his applications; that he has been an approved correspondent of a member of the New York Consolidated Stock Exchange since the year 1907 and is now a member of that exchange; that, in conducting his business, he has always complied with the laws of this commonwealth; that he does not desire the quotations and service for any unlawful or improper use, but for use in his legitimate brokerage business in Boston; and that his business will suffer irreparable damage if he is unable to procure them.

These allegations were not denied by the respondents. They stated, however, that the New York Stock Exchange had notified them that the petitioner's applications had been disapproved, but did not furnish the Commission with the reason or reasons for such disapproval. It appears that the petitioner's office is within the district supplied by the respondents with said quotations and service, and that he is ready and willing to pay the same price that other patrons of the respondents pay, and to comply with all reasonable rules and regulations applying thereto. It does not appear that the respondents, or either of them, have questioned the right of the New York Stock Exchange to disapprove the petitioner's applications without stating the reason or reasons therefor. Nor does it appear whether or not said exchange was notified by the respondents, or either of them, of this proceeding. The exchange was not represented at the hearing.

[1] The Commission's jurisdiction over the subject-matter of

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the petition, if any it has, is under § 2, chapter 784, of the Acts of 1913, which reads, in part, as follows:—

"The Commission shall, so far as may be necessary for the purpose of carrying out the provisions of this or any other act, have general supervision and regulation of, and jurisdiction and control over, the following services, when furnished or rendered for public use within the commonwealth, and all persons, firms, corporations, associations, and joint stock associations or companies, hereinafter in this act collectively called common carriers and severally called a common carrier, furnishing or rendering any such service or services. . . .

"The transmission of intelligence within the commonwealth by electricity, by means of telephone lines or telegraph lines or any other method or system of communication, including the operation of all conveniences, appliances, instrumentalities, or equipment utilized in connection therewith or appertaining thereto."

Both of the respondents are foreign corporations. The Gold & Stock Telegraph Company was organized in August, 1867, under the laws of the state of New York, for the purpose "of constructing, using, maintaining, owning, and operating telegraph lines." Its business is the establishment and operation of plants, or what are generally known as "stock telegraph systems," in various communities, both within and without the state of New York, for the transmission and the selling and furnishing of stock quotations and other market news. The United Telegram Company was organized in 1890 under the laws of the state of New Jersey. The objects for which it was formed are "to receive and distribute stock market and other quotations and news reports of various kinds, and the performance of a general district messenger service, all of which is to be carried on out of this state (New Jersey)." The principal office or place of business out of New Jersey is given in the certificate of incorporation as "the city of Boston, Suffolk county, commonwealth of Massachusetts." Both of the respondents have established "stock telegraph systems" in Boston for the transmission of, and have carried on in Boston the business of selling and furnishing, stock market and other market quotations.

Each of the respondents has a main office where there are certain electrical appliances with a keyboard attachment. These

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appliances are connected by a system of wires and cables, running under and across the public ways of the city, with the "ticker" instruments in the offices of the patrons. The quotations to be distributed are delivered into the main office, and forthwith an employee, operating the keyboard, causes them to be written simultaneously, by means of the so-called "ticker" instruments, upon a tape of paper in the office of every patron, where they can be easily read. The quotations of the New York Stock Exchange are delivered at the main office of The United Telegram Company over a wire of the Postal Telegraph-Cable Company. They are delivered at the main office of the Gold & Stock Telegraph Company over a wire of the Western Union Telegraph Company.

On December 14, 1881, as it appears, the Gold & Stock Telegraph Company leased all of its plants, or "stock telegraph systems," both within and without this commonwealth, for the term of ninety-nine years to the Western Union Telegraph Company, a New York Corporation. Since January 1, 1882, the Western Union Telegraph Company has carried on the business in Boston formerly carried on by the Gold & Stock Telegraph Company, and has carried it on in the name of the Gold & Stock Telegraph Company, as it has authority to do under said lease.

The New York Stock Exchange is a voluntary association, limited to 1,100 members, furnishing facilities to its members for the transaction of the business of buying and selling stocks and bonds. It is now the largest market for securities in this country, if not in the world, and its importance in the economic system can hardly be exaggerated. The knowledge of the prices made in transactions on the exchange has become of great commercial value in the business life of the country in general; and companies, such as the respondents, exist for the purpose of disseminating or distributing this information. These quotations when collected are property. See New York & C. Grain & Stock Exch. v. Board of Trade, 127 Ill. 153; 2 L.R.A. 411, 11 Am. St. Rep. 107, 19 N. E. 855; L. A. Kinsey Co. v. Board of Trade, 198 U. S. 236, 49 L. ed. 1031, 25 Sup. Ct. Rep. 637; Hunt v. New York Cotton Exch. 205 U. S. 322, 51 L. ed. 821, 27 Sup. Ct. Rep. 529. It is, indeed, a matter of general knowledge that the transactions and prices quoted on the New York Stock

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Exchange evidence the market or current value of the stocks and securities listed there, and that these quotations are not only a commodity in common use, but are of vital importance to those engaged in the business of dealing in these stocks and securities.

The dissemination and distribution of these quotations is not a favor to the public granted by the exchange. It is, and has been from the beginning, a matter of business, a service rendered which is productive of profits. For some years the members of the exchange were apparently satisfied, as compensation for these quotations, with the enhanced profits which they doubtless derived from the increased transactions in the listed securities which the wider dissemination of the quotations by the ticker companies caused; and they allowed the reporters and employees of these companies on the floor of the exchange for the purpose of collecting the quotations. This policy, however, was changed in 1892. In that year the exchange decided to collect the quotations itself and to make a charge for them. On November 19, 1892, it made its first contract with the Western Union Telegraph Company, which acted for itself and as lessee of the Gold & Stock Telegraph Company, whereby it agreed to collect and furnish the quotations to the telegraph company for the sum of $27,000 per annum, and further agreed that the telegraph company should have a monopoly of the quotations throughout the whole country except in Boston and in a prescribed area in New York city.

The contract with this exchange referred to in the answer of and relied upon by the Gold & Stock Telegraph Company, acting through its lessee, the Western Union Telegraph Company, is dated July 1, 1914, and the contract referred to in the answer of and relied upon by the United Telegram Company is dated October 1, 1914. So far as they are material in this case, the provisions of these two contracts are very similar. In the one between the exchange and the Western Union Telegraph Company, acting for itself and as lessee of the Gold & Stock Telegraph Company, the exchange agrees, at its own expense, to furnish to the telegraph company full and continuous quotations of prices made in transactions upon the exchange, for which quotations the telegraph company is to pay $50,000 per annum; and the telegraph company may retail or furnish

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said quotations to any person, whether a member of the exchange or not, anywhere in the United States or Canada, outside a prescribed area in New York city, provided, however, that "the telegraph company shall not after the 1st day of November, 1914, furnish quotations by ticker or otherwise in the volume of a continuous service which is defined to be oftener than at intervals of fifteen minutes (and is herein referred to as continuous quotations) to any subscriber therefor unless the subscriber shall have signed in duplicate an application therefor addressed to the telegraph company, and the subscriber shall have been approved by the exchange." In the contract between the exchange and the United Telegram Company, the exchange agrees to furnish the telegram company the said quotations by means of a New York Quotation Company ticker installed in the office of the Postal Telegraph-Cable Company at No. 18 Broadway, New York city, for which quotations the telegram company is to pay the exchange $9,000 per annum. The telegram company is restricted to retailing or furnishing these quotations to subscribers in Boston. This contract contains a provision similar to the one quoted above in regard to the approval of subscribers by the exchange.

Both contracts contain the provision that "in case any suit or legal proceeding is brought to enjoin the telegraph company from refusing to furnish quotations to any person, the telegraph company shall at once inform the exchange of such suit or proceeding, and shall permit the exchange to intervene therein, or to defend the same in the name of the telegraph company; but in such cases, the exchange shall indemnify the telegraph company against and save it harmless from any and all costs and damages awarded against it." Both contracts also contain the following interpretative provision, to wit, "it is understood and agreed that as to the right of the exchange hereinbefore specified, to disapprove applicants for quotations and to require the discontinuance of the furnishing of such quotations on notice given by it, it is the intent only to prevent the unlawful or improper use of such quotations."

The questions involved in this case are largely questions of law. The underlying question is: Are the respondents, in supplying these quotations by means of "stock telegraph systems,"

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engaged in furnishing or rendering a service for public use within this commonwealth?

There is no question but that the respondents are engaged in the "transmission of intelligence within the commonwealth by electricity by means of telegraph lines," to use the language of the statute. But it is clear that this business differs in kind from the usual or ordinary telegraph business, which is transmitting messages of the public for hire, and that the duty of the Western Union Telegraph Company (lessee of the Gold & Stock Telegraph Company) to the public in its telegraph business, as the term is usually applied, is not involved in this case. This distinction between the ordinary telegraph business and the business of supplying or retailing stock and other market quotations and news by persons or companies, by means of "stock telegraph systems," has recently (1908) been noted by the Western Union Telegraph Company itself in a suit in Texas against the company for damages caused by erroneous market reports. In that case the Western Union Telegraph Company set up the claim that if the plaintiff had any contract by which he was to receive market quotations the contract was with the Gold & Stock Telegraph Company; that with reference to such contract the Western Union Telegraph Company acted only as agent; and that the Western Union Telegraph Company is not engaged in the business of gathering or furnishing market reports, but is confined by its charter to the transmission of telegraph messages for the public for hire. See Western U. Teleg. Co. v. Bradford, 52 Tex. Civ. App. 392, 114 S. W. 686. In this case the defendant company was not successful in avoiding the payment of damages, but the claim of the defendant shows clearly the distinction between the two lines of business or services.

This distinction was also noted in a case decided in June of this year in the supreme court of New York for Erie county (Tucker v. Western U. Teleg. Co.). The following quotations from the opinion in this case are of interest in this connection:—

"If the elements of the business were all embraced in the matters above outlined, it might be urged that the brokers were the agents of the members of the exchange in procuring business, and through arrangements definitely made, the exchange on behalf of the member sending to the brokers, by means of the

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telegraph company, private information to enable them to do business, the telegraph company would therefore be bound to deliver this information to the persons and to them only, whom the member or the exchange should designate; the messages would be like ordinary messages, subject to secrecy. Whether they were sent in the common yellow envelop or were transmitted through the means of the ticker would make no difference."

But this is not the situation presented by this case.

"If it were, the exchange would pay the telegraph company for every message so sent, at rates common to all, while the fact is the telegraph company pays the exchange a large sum, presumably not a gift, but a payment made for the purpose of acquiring something. If it were the business of sender and carrier, the exchange would seek the agents, assume the work, and charge for installing the tickers, while the fact is, the telegraph company has the responsibility of securing the patrons, installing the equipment, and collecting the cost."

The courts of this commonwealth have not passed on the question, but it seems clear on principle that the respondents are engaged in furnishing or rendering a service for public use. The stock and other market quotations which they sell and distribute are not only convenient and advantageous to a large section of the public, but are a necessity in certain important lines of business. These quotations cannot be furnished and distributed by ticker, or "stock telegraph system," without the special privilege of using the public ways for the lines and cables essential to the service. The granting of such a special privilege or franchise indicates that the business carried on by the respondents was considered public in character. See Rhinehart v. Redfield, 93 App. Div. 410, 87 N. Y. Supp. 789 (affirmed in 179 N. Y. 569, 72 N. E. 1150); Pierce v. Drew, 136 Mass. 75, 77, 49 Am. Rep. 7; Boston v. Richardson, 13 Allen, 146, 160; New England Teleph. & Teleg. Co. v. Boston Terminal Co. 182 Mass. 397–399, 65 N. E. 835; State ex rel. Belt v. St. Louis, 161 Mo. 371, 61 S. W. 658; Emerson v. Babcock, 66 Iowa, 257, 55 Am. Rep. 273, 23 N. W. 656.

It was held in New York & C. Grain & Stock Exch. v. Board of Trade, 127 Ill. 153, on p. 163, 2 L.R.A. 411, 11 Am. St. Rep. 107, 19 N. E. 855:

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"Assuming these market quotations and reports are property and the private property of the board of trade, yet if they have been so used by the board, and by the telegraph company with the knowledge and consent of the board, as to become affected with a public interest, then they are subject to such public regulation by the legislature and the courts as is necessary to prevent injury to such public interest. The doctrine in question has application both to the property of individuals and of corporations, and it is therefore immaterial that any such corporation may be a mere private corporation. If the interest is public, then it is necessarily, to all alike, common to all and upon equal terms. The doctrine, as applied to the matter of these market quotations, would forbid that a monopoly should be made of them by furnishing them to some and refusing them to others who are equally willing to pay for them and be governed by all reasonable rules and regulations, and would prevent the board of trade or the telegraph companies from unjustly discriminating in respect to the parties who will be allowed to receive them."

See also Inter-Ocean Pub. Co. v. Associated Press, 184 Ill. 450, 48 L.R.A. 568, 75 Am. St. Rep. 184, 56 N. E. 822.

In the case of Smith v. Gold & Stock Teleg. Co. 42 Hun, 454, in which the principle laid down in New York & C. Grain & Stock Exch. v. Board of Trade was sustained, the Western Union Telegraph Company was made a party defendant. This was a suit in equity brought by the plaintiff to restrain the defendants from removing from his offices a stock "ticker," and from doing or failing to do any act which would in any way interfere with the receipt by the plaintiff of the quotations of the New York Stock Exchange. By one of the clauses in the contract between the plaintiff and the Gold & Stock Telegraph Company the plaintiff had agreed that the company might forthwith discontinue its service without notice, whenever, in its judgment, any breach of the conditions of the contract should have been made by him. The defendants, among other contentions, claimed that they were not chartered to carry on the business of supplying quotations. In answer to that contention the court, by Pratt, J., said:—

". . . the charter of the corporation is not solely to be consulted in arriving at the measure of its obligations to the public.

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When the charter provides that a corporation shall engage in some specified public occupation, no doubt a reference thereto will be an easy way to establish its obligations to perform such service. But we do not accede to the doctrine that, when engaged in a business concerning the performance of which its charter is silent, a corporation is freed from the obligations which ordinarily attach to a natural person engaging in such occupation.

"Had defendants in the present action answered that collecting and distributing commercial intelligence being foreign to the objects for which they are incorporated, they had in consequence abandoned that branch of their business and withdrawn their "tickers" from all offices except the plaintiff's, we should not hold that they could be compelled to carry on the business for his benefit. But so long as collecting and supplying quotations is carried on by them, as it is conceded to be at present, they should render equal and impartial service to those who comply with reasonable regulations." (p. 455.)

In regard to the above-noted clause in the contract between the plaintiff and the Gold & Stock Telegraph Company, Justice Pratt said:—

"What regulations are reasonable may not in all cases be easy to determine. But there need be no hesitation in saying that the clause in their contract permitting them to discontinue the service when in their judgment a breach of conditions has been had, is not a reasonable regulation and affords no defense to this action. No man can be judge in his own case, and to justify defendants in refusing to perform service, there must be a reason that the court can pronounce sufficient." (pp. 455, 456.)

See also Friedman v. Gold & Stock Teleg. Co. 32 Hun, 4 (1884) and Shepard v. Gold & Stock Teleg. Co. 38 Hun, 338 (1885).

It is to be noted that these cases against the Gold & Stock Telegraph Company arose after its plants, or "stock telegraph system," had been leased to the Western Union Telegraph Company, to wit, after January 1, 1882; and also that they arose before the exchange inaugurated the policy of collecting the quotations itself and charging respondents for them, to wit, before November 19, 1892.

[2] It is too well established to require further citation of

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authorities that one engaged in furnishing or rendering a service for public use cannot, without legal reasons therefor, refuse to furnish such service to a particular customer if the service demanded be of a character which it holds itself out as prepared to furnish to the public of the class to which the applicant belongs. The respondents contend that the contract between them and the New York Stock Exchange, providing for the right of approval by the exchange of the patrons for these quotations and service, furnish legal grounds for their discrimination against the complainant. This contention we must hold to be unsound.

The provision in the contract which reads, "It is understood and agreed that as to the right of the exchange hereinbefore specified to disapprove applicants for quotations and to require the discontinuance of the furnishing of such quotations on notice given by it—it is the intent only to prevent the unlawful or improper use of such quotations," is most significant. It is a well-known principle of law that those engaged in the business of furnishing or rendering a service for public use may properly refuse to furnish or render such service in furtherance of a purpose or business which is illegal or improper from the view point of the public. See Bryant v. Western U. Teleg. Co. 17 Fed. 825; Metropolitan Grain & Stock Exch. v. Chicago Bd. of Trade, 15 Fed. 847; Goodwin v. Carolina Teleph. & Teleg. Co. 136 N. C. 258, 67 L.R.A. 251, 103 Am. St. Rep. 941, 48 S. E. 636, 1 Ann. Cas. 203. Thus, notwithstanding the respondents are held to be engaged in furnishing or rendering a service for public use, the provisions in the contracts between them and the exchange providing for the approval by the exchange of the patrons for the quotations, read in the light of the above-quoted interpretative provision, are not only legal to the extent of retaining in the exchange sufficient interest and control over these quotations to enable it to appeal to the courts for aid in keeping them from the hands of those who would procure them wrongfully or who desire them for illegal and improper use (see L. A. Kinsey Co. v. Board of Trade, 198 U. S. 236, 49 L. ed. 1031, 25 Sup. Ct. Rep. 637; Hunt v. New York Cotton Exch. 205 U. S. 322, 51 L. ed. 821, 27 Sup. Ct. Rep. 529), but they are laudable and wholesome, tending as they do to check unlawful and improper conduct.

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And these provisions for approval by the exchange must be construed in the light of the above-quoted interpretative provision. This confines to a very narrow area the grounds upon which the exchange can exercise its right to disapprove applications. There is no room here for caprice, prejudice, or malice; nor any room for a mere suspicion that the applicant desires the quotations for an unlawful and improper use; nor any room for any reason whatever other than the fact that the quotations are desired by the applicant for an unlawful and improper use. Unless these provisions are so construed they must be held to be invalid as hampering and restricting those engaged in furnishing or rendering a service for public use in their duty to the public. Assuming that the quotations of the New York Stock Exchange are not affected with a public use or public interest, and that the exchange may withhold them entirely from the public, yet when it sells its quotations to the respondents with a view to their dissemination and distribution it is not making contracts for the sending of ordinary telegraph messages but is making contracts with parties engaged in the business of furnishing and rendering a service for public use, and whose duty to the public is the supplying and furnishing of market quotations. See Smith v. Gold & Stock Teleg. Co. 42 Hun, 454; New York & C. Grain & Stock Exch. v. Board of Trade, 127 Ill. 153, 2 L.R.A. 411, 11 Am. St. Rep. 107, 19 N. E. 855. And this duty cannot be hampered or restricted by any arrangement or contract between the parties. When property is sold or leased to those furnishing or rendering a service for public use it becomes affected with a public interest and there can be no restrictive covenants. See Delaware & A. Teleg. & Teleph. Co. v. Delaware, 2 C. C. A. 1, 3 U. S. App. 30, 50 Fed. 677; Commercial U. Teleg. Co. v. New England Teleph. & Teleg. Co. 61 Vt. 241, 5 L.R.A. 161, 15 Am. St. Rep. 893, 17 Atl. 1071; Chesapeake & P. Teleph. Co. v. Baltimore & O. Teleg. Co. 66 Md. 399, 59 Am. Rep. 167, 7 Atl. 809; Buffalo East Side R. Co. v. Buffalo Street R. Co. 111 N. Y. 132, 140, 2 L.R.A. 384, 19 N. E. 63; Union Trust & Sav. Bank v. Kinloch Long Distance Teleph. Co. 258 Ill. 202, 208, 45 L.R.A.(N.S.) 465, 101 N. E. 535, Ann. Cas. 1914B, 258. To hold otherwise would be to permit those engaged in furnishing or rendering a service for public use to commit to other individ-

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uals, corporations, and associations the right to determine their public duties in respect to furnishing service.

The respondents in support of their contention that their contracts with the exchange furnish a valid reason or excuse for refusing to supply the complainant with the quotations and service he desires, strongly rely upon the case Re Renville, 46 App. Div. 37, 61 N. Y. Supp. 549 (1899). In this case the petitioner sought to compel the Gold & Stock Telegraph Company to place a ticker in his office and to furnish him with quotations from the New York Stock Exchange. The court denied his application. That the decision in that case turned upon a different state of facts, and is not to be taken, even by the courts of New York, as governing the present relations of these companies to each other and to the public is made clear by the language of the court in Tucker v. Western U. Teleg. Co. supra. Denying the application of the defendants to vacate a temporary injunction restraining them from discontinuing ticker service the court in distinguishing the Renville Case said:—

"In that case the court refused a mandamus to compel the telegraph company to furnish petitioner with quotations of the exchange in the same manner as furnished to others. This decision was made in 1899, before telegraph companies were brought within the Public Service Commissions law. It does not appear that the applicant in that case conformed to the reasonable rules and regulations, nor that the respondents were not acting within their rights in refusing the service.

"The conclusion reached here does not conflict with the law of the Renville Case applied under then existing conditions. It appears in that case [p. 43] that this private voluntary association (the exchange) being thus in control of its own property, and having the absolute right to give information as to the dealings of its members with each other to whom it pleases, and upon such conditions as it pleases to impose, gives certain information to the defendants to be delivered to certain specified persons, and upon condition that the defendants give such information to such specified individuals and none other.

"It appears that by the agreement between the exchange and the telegraph company then in force, the telegraph company had the right [p. 41] to serve said reports to . . . all per-

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sons, firms, corporations, and organizations in New York city and elsewhere . . . except to persons who may be directly or indirectly engaged in the promotion or maintenance of 'bucket shops.'

"It thus appears that the purpose of the restrictions was to prevent the furnishing of quotations to bucket shops; that the exchange retained control of its own property, and specified the person to whom it should be delivered. It would seem that it would be nearer correct if it stated the persons to whom it should not be delivered. In the present case the exchange does not specify any persons whatever. It delivers the property for value to the telegraph company with the only legal restriction that the telegraph company shall not specify any persons engaged in promoting bucket shops. The telegraph company has specified these plaintiffs, who are entitled to the presumption that they are not in the prohibited class, and moreover it is alleged, and not controverted, that they are not in the business of promoting bucket shops." See also Hein v. New York Stock Exchange, 64 Misc. 529, 118 N. Y. Supp. 591 (1910) and N. Y. Laws, 1913, chap. 477.

The respondents also strongly rely upon L. A. Kinsey Co. v. Board of Trade, 198 U. S. 236, 49 L. ed. 1031, 25 Sup. Ct. Rep. 637, and Hunt v. New York Cotton Exch. 205 U. S. 322, 51 L. ed. 821, 27 Sup. Ct. Rep. 529. Neither of these cases tends to establish the contention of the respondents. Both recognize the right, which is not controverted here, of the exchanges or markets to protect their quotations against pilferers, or those who would secure them wrongfully, and against their illegal and improper use. But in neither case was it decided, nor was it necessary to a decision, that exchanges or markets, in furnishing or distributing their quotations through the agency of companies engaged in the business of furnishing and rendering a service for public use, could make unjust and unreasonable discrimination as to persons. In L. A. Kinsey Co. v. Board of Trade, 198 U. S. 236, Justice Holmes, on page 251, referring to the case of New York & C. Grain & Stock Exch. v. Board of Trade, supra, which held that market quotations when furnished for distribution become affected with a public interest, says: "But it is not necessary to consider whether we are bound by that decision or,

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if not, should follow it, since in these cases the claim is not qualified by submission to reasonable rules or an offer of payment. It is a claim of independent rights and a denial that the plaintiff has any right at all. The supreme court of Illinois gave no sanction to such a claim as that."

The same year, 1905, that the case of L. A. Kinsey Co. v. Board of Trade was decided, the supreme court of Indiana in Western U. Teleg. Co. v. State, 165 Ind. 492, 3 L.R.A.(N.S.) 153, 76 N. E. 100, 6 Ann. Cas. 880, held that where a telegraph company in connection with other business buys continuous market quotations and sells the same to others, for such time as to make quotations necessary to business, it must supply them to all on equal terms.

[3] The respondents contend that the Commission should assume that the exchange acted in good faith and disapproved the petitioner's application on the grounds specified in the contracts, to wit, that the petitioner desired these quotations for an "unlawful and improper use." It is not, however, for the Commission to make any such assumption. It is the duty of the courts or of any regulating and supervising body established by the legislature, such as the Commission is, to determine on the evidence before it whether or not unjust and unreasonable discrimination is made by persons, natural or artificial, engaged in furnishing or rendering any service for public use. It was open for the exchange to appear at the hearing and submit any evidence it might have, if any, of the unlawful and improper use for which the petitioner desires these quotations, and we take it that the respondents promptly notified the exchange of this proceeding, as it comes plainly within the spirit if not within the strict letter of the provisions in the contracts making it the duty of the respondents to notify the exchange at once of any suit or legal proceeding brought to enjoin the respondents from refusing these quotations to any person. But whether or not the exchange was notified of this proceeding, the Commission must decide the case on the evidence before it. There was no evidence whatever that the petitioner desired these quotations for unlawful and improper use. If the exchange can, by disapproving the petitioner's application and without submitting, when its decision is called in question before the proper authorities, evidence to prove that he

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desires the quotations for unlawful and improper use, keep the respondents from furnishing him with these quotations and ticker service, it may thus without producing any evidence cut off from receiving them any banker, broker or other person for any reason or, indeed, without reason. Such a power in this country is unthinkable. Where a public service or public use is involved there can be lodged nowhere powers of unjust and unreasonable discrimination.

[4] The respondents further contend that the Commission is without jurisdiction; that the matter in controversy is "within the sole jurisdiction of the Interstate Commerce Commission under the acts of Congress."

The telegraph is an instrument of commerce and as such, for some purposes, comes within the interstate commerce clause and postal clauses of the Federal Constitution; and the provisions of § 3 of the acts of Congress to regulate interstate commerce were, by amendment of June 18, 1910, extended to "telegraph, telephone, and cable companies (whether wire or wireless) engaged in sending messages from one state, territory, or district of the United States, to any other state, territory, or district of the United States, or to any foreign country." And this amendment also provides that its provisions shall not apply "to the transmission of messages by telephone, telegraph, or cable wholly within one state, and not transmitted to or from a foreign country or from or to any state or territory as aforesaid."

It seems clear that this amendment was intended to apply to telephone and telegraph companies in their business of serving the general public as common carriers of messages. There is involved in this case, as we view it, no question concerning the duty to the public of a telegraph company in its ordinary telegraph business of carrying or transmitting messages to the public for hire. The business of the respondents which we are dealing with is, as we have before noted, a public business of a very different character. There are no messages, in the ordinary sense of the word (the sense in which we conceive it to be used in the amendment referred to above) sent from anywhere. The respondents purchase in New York city a certain commodity or property, to wit, quotations of the New York Stock Exchange. They are under no obligations to the exchange to send this

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property or commodity anywhere. In order to resell or to retail it in Boston the respondents have it conveyed or shipped to Boston by the only means by which it can effectively be conveyed, over fast wire telegraph lines,—in the case of the Gold & Stock Telegraph Company over the wires of the Western Union Telegraph Company, and in the case of the United Telegram Company over the wires of the Postal Telegraph-Cable Company. It is delivered in Morse code at the main offices of the respondents in Boston, and at these offices is translated into words and numerals in the ordinary alphabet and sent out over their respective "stock telegraph systems" to their various patrons.

There is no doubt, of course, that while it is being conveyed over the wires from New York to the main offices of the respondents in Boston, it is a commodity or property moving in interstate commerce over which Congress has jurisdiction. But in our opinion the jurisdiction of Congress ceases when the property is delivered at the main offices in Boston. After it is delivered there the respondents are under no duty or obligation to the exchange to resell or distribute it. Mr. Justice McKenna said, of moving picture films shipped into the state of Ohio, speaking for the court in Mutual Film Corp. v. Industrial Commission, 236 U. S. 230, 59 L. ed. —, 35 Sup. Ct. Rep. 390 (1915): "There must be some time when the films are subject to the law of the state, and necessarily when they are in the hands of the exchanges, ready to be rented to exhibitors." There must, likewise, be some time when the commodity or property in question in this case becomes subject to the laws of Massachusetts. In our view, it is when the quotations are delivered at the respective main offices of the respondents in Boston.

[5] If, however, we are in error in this view, as there has been no specific action by the Interstate Commerce Commission dealing with the subject-matter in controversy in this case, and as it is not clear that this matter is within the above-mentioned amendment of June 18, 1910, we hold that until Congress or the Interstate Commerce Commission takes some specific action this Commission has jurisdiction. Indeed the duty of the companies to give service with substantial impartiality and without invidious discrimination is a common-law duty not dependent upon legislative enactment or administrative order. It

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would seem beyond question that in the absence of any specific action by Congress or the Interstate Commerce Commission there resides in the state courts and Commissions at least concurrent power of remedial action. The order for the removal of the discrimination complained of in this case is an enforcement of the common-law duty of the companies, and cannot be said to impose any tax or burden upon the interstate transmission of the quotations, nor to embarrass, obstruct, or impede the full and fair performance of service to any persons or corporations not within the jurisdiction of this Commission. See Missouri P. R. Co. v. Larabee Flour Mills Co. 211 U. S. 612, 623, 53 L. ed. 352, 361, 29 Sup. Ct. Rep. 214. See also Manufacturers' Light & Heat Co. v. Ott, 215 Fed. 940, where it was held that a state Commission may regulate the price to be charged by gas companies furnishing natural gas to consumers within the state although some of the gas supplied is piped from other states. See also Western U. Teleg. Co. v. James, 162 U. S. 650, 660, 661, 40 L. ed. 1105, 1108, 1109, 16 Sup. Ct. Rep. 934; Vermilye v. Western U. Teleg. Co. 207 Mass. 401, 93 N. E. 635, and cases cited.

[6] The respondents, if they furnish or supply to any customer in Boston the quotations of the New York Stock Exchange by means of ticker or "stock telegraph system," must furnish or supply them without unjust and unreasonable discrimination to all customers within the district or districts supplied by their respective services who will comply with all lawful regulations connected with said service, and who desire said quotations for lawful and proper use.

ORDER.

It appearing that the Gold & Stock Telegraph Company, by the Western Union Telegraph Company, lessee, and the United Telegram Company, have without just cause denied, and refused to supply to, Calvin H. Foster the continuous quotations of the New York Stock Exchange by means of ticker service now furnished and supplied to others, said denial of service is held to constitute an unjust and unlawful discrimination, and it is

Ordered that the Gold & Stock Telegraph Company, by the Western Union Telegraph Company, lessee, and the United Telegram Company shall forthwith remove said discrimination.

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MISSOURI PUBLIC SERVICE COMMISSION.

IN RE SOUTHWESTERN TELEGRAPH & TELEPHONE COMPANY.

[Cases Nos. 109 and 187.]

Valuation — Book value — Assets not representing investment — Accounting.

1. In ascertaining the value of a telephone plant, items credited to capital stock and discount on stock and charged to investment, and which later are credited to investment and charged to contracts and licenses, and items representing no actual investment, entered on the books upon the transfer of the company, were rejected.

Valuation — Telephones — Equipment not owned by utility.

2. The value of transmitters, receivers and induction coils used by a telephone company were capitalized for the purpose of allowing a return thereon, although they were the property of another company, where a per cent of the gross income was paid to the owner as a license charge.

Valuation — Telephones — Working capital — Amount.

3. One twelfth of the gross annual income of a telephone company was held to be a reasonable allowance for working capital, in valuing its property for rate-making purposes.

Valuation — Elements of — Going value — Overhead charges.

4. The fair present value of a telephone plant was ascertained, for the purpose of fixing rates, by considering the elements of value, tangible and intangible, of the property used in the service, taking into account the fact that the plant was a going concern in successful operation, and including engineering, supervision; and interest during construction, organization, and general expenses, contingent expenses, insurance, general contractor's profit, promotion, and other development expenses, and working capital.

Return — Telephone equipment — License fee — Operating expenses.

5. The amount of an annual per cent of gross income of a telephone company, paid to another company as a license charge for transmitters, receivers, and induction coils, will not be allowed as an operating expense in computing the return, where the value of the instruments has been taken into account in arriving at the present fair value of the plant.

Return — Telephones — Amount — Companies with other rates — Apportionment of salary.

6. A telephone company was authorized to put into effect increased rates which would produce a return of 6.23 per cent of the present fair value of the particular exchange, such rates being approximately those charged by similar companies in like cities, although the revenue would not permit an allowance for depreciation and contingent reserve, where the operating expenses of the exchange could be reduced by prorating the salary of its manager to other exchanges under his

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supervision, and it was probable that increased earnings would result from the plant as rebuilt.

Rates — Regulation — Power of city — When validity of ordinance will not be determined.

7. The Missouri Commission, in fixing telephone rates in a city, will disregard an ordinance purporting to regulate such rates passed prior to the statute authorizing cities to regulate rates, and will not determine the effect of the failure of the mayor to sign the ordinance.

[June 28, 1915.]

APPLICATION of the Southwestern Telegraph & Telephone Company for permission to increase its exchange rates at Caruthersville, and proceedings for the valuation of the exchange. The company was authorized to put into effect monthly rates of $2.50 for business, direct line; $1.50 for residence, direct line; $3 to $3.75 for private branch exchange trunks; $4 to $5 for intercommunicating business trunks, and $2.50 to $3 for intercommunication residence trunks, yielding an annual return of approximately $1,557.07 upon the ascertained valuation of $25,000.

Appearances: S. H. Harris and A. H. Bolte for applicant; V. J. Higgs, C. G. Shepard, and H. C. Garrett in opposition.

Atkinson, Chairman: I. *The Issues.*—On September 2, 1913, the Southwestern Telegraph & Telephone Company, applicant herein, filed with the Commission its application for permission to establish a new schedule of rates in its exchange in the ctiy of Caruthersville, this state, in which it set forth in substance that its present rates are $2 per month for business telephones and $1.25 per month for residence telephones; that it desires to increase its rates to $2.50 per month for business telephones, direct line, and $1.50 per month for residence telephones, direct line, and private branch exchange trunks from $3 to $3.75 per month; for intercommunicating system trunks (business) from $4 to $5 per month, and intercommunicating trunks (residence) from $2.50 to $3 per month; that the ordinance of said city of Caruthersville provides for a business rate of $2.50 per month and a residence rate of $1.50 per month; that Caruthersville belongs to a class of cities scheduled by the applicant as class "B," and that the proposed change of rates would make the rates at Caruthersville nearer in accord with

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the rates in similar cities served by applicant company. For full information the applicant referred to the classification of cities it had on file with the Commission.

The applicant further sets forth that since the purchase of the telephone system at Caruthersville it has gone to great expense in making improvements in the plant and system, and has changed the same from a single wire grounded system to a full metallic system, and that the added investment and expense of improvements in the service amounted to some $8,000, and fully justified the proposed increase of rates as provided for by said ordinance.

On September 4, thereafter, the Commission issued an order suspending the proposed rates and requiring said applicant company to file with the Commission complete inventories of all its property in the Caruthersville exchange. This order suspending the operation of the proposed increase of rates has been continued from time to time either by order of the Commission or by mutual agreement between the applicant and representative of the city, and is still in effect, and the proposed rates have not yet become effective.

On November 5, thereafter, the Commission issued an order in which it set forth in substance that it is the intention of the Commission to ascertain the value of the telephone exchange of said applicant company located at Caruthersville in order that the Commission may be enabled to determine the reasonableness of the rates now being charged by said applicant and to fix reasonable maximum rates to be thereafter charged by said applicant for telephone service rendered by said exchange at Caruthersville. The order also required the company to file inventories and to submit its books for inspection to the engineers and accountants of the Commission.

The engineers and accountants for applicant company thereafter submitted in evidence before Commissioner Woerner detailed inventories, appraisals, and audits of the property, income, and operating expenses of the exchange at Caruthersville. The engineers and accountants of the Commission also made an appraisal, valuation, and audit of all of the properties of the exchange at Caruthersville, and the gross income and

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operating expenses of same, which was thereafter offered in evidence.

The cases were submitted on oral argument and briefs were filed by applicant.

II. *The Franchise Rates.*—The city of Caruthersville is organized as a city of the fourth class, as provided by § 8527, Rev. Stat. 1909. On December 4, 1899, the board of aldermen of said city passed ordinance No. 212, granting to the Cape Girardeau Telephone Company and its assigns (one of applicant's predecessors) a franchise to construct and operate a telephone exchange in said city. By the terms of § 2 of said ordinance, the rates were prescribed as follows: For business phones $2; for residence phones $1; and a combination price of $2.50 where a subscriber took one of each.

On November 7, 1904, said city passed ordinance No. 21, which repealed § 2 of said ordinance No. 212, and enacted in lieu thereof a new section, which reads as follows:

"Section 2. Said company shall not charge a greater monthly rental to its subscribers than $2.50 for each business telephone, and $1.50 for each residence telephone, which rates shall be deemed to include the use of the telephone by the subscriber, members of his family, and his employees in the discharge of their duties as such, and shall include said exchange and all toll lines now owned and controlled by said company within the limits of Pemiscot county, Missouri; and said company shall make no greater charge to its said subscribers for services on its toll lines in southern Missouri than it makes to the subscribers to said companies' other exchanges; provided that said above-named rates shall not be in effect until said telephone company shall have put into operation and maintain a long-distance telephone line from Caruthersville, Missouri, to Campbell, in Dunklin county, Missouri, there to connect with the long-distance line maintained by and with the telephone system known as the Bell Telephone System with connections to St. Louis and elsewhere, and until said company shall have put into operation and maintained in the city of Caruthersville a full metallic system of Bell telephones, such as are used by the Bell Telephone Company and its sublicensees; and provided, further, that said company shall give all of its subscribers and patrons

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service upon the long-distance telephones of the Bell Telephone System at such rates as are fixed by said Bell Telephone Company and its sublicensees. The above rates shall not be effective until after said telephone company shall have completed the putting in of said metallic system, and until it shall have made connection with said Bell Telephone System at the point aforesaid, and until after approval by the board of aldermen of said city of Caruthersville. Said telephone company, upon request, shall place in the business houses and residences of this city, or both, of the person applying therefor a telephone or telephones and render services upon the payment of six months' rent in advance if required. The said Cape Girardeau Telephone Company shall file its acceptance in writing within thirty days after the passage and approval hereof."

On March 7, 1906, the board of aldermen of said city passed ordinance No. 31, which was intended to repeal said ordinance No. 21, and to insert in lieu thereof the same rates as were prescribed in § 2 of said ordinance No. 212. The record discloses that the ordinance was read the required number of times, and the vote on its passage was entered on the record as required by law. The record kept by the board of aldermen contains the following recital: "Ordinance No. 31 was therefore signed and approved by the mayor and attested by the city clerk." The original ordinance was not offered in evidence, neither do we find any explanation disclosing why it was not produced at the hearing. The record of the city in which it records its ordinances was introduced in evidence, which shows that said ordinance No. 31 was not signed by the mayor, the place for the signature of the mayor appearing blank in said record, from which the certified copy filed as an exhibit was made.

Section 9369, Rev. Stat. 1909, provides the manner for the passage of an ordinance by the board of aldermen of a city of the fourth class. This section provides: "No bill shall become an ordinance until it shall have been signed by the mayor or person exercising the duties of the mayor's office, or shall have been passed over the mayor's veto as hereinafter provided."

Section 9370, id., provides how an ordinance may be passed over the mayor's veto. The view we take of this ordinance as

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to the city's authority to regulate rates prior to the passage of the so-called enabling act of 1907 makes it unnecessary for us to pass on the question of the validity of said ordinance not having been signed by the mayor.

[1] III. *Original Cost.*—On December 31, 1912, the Southwestern Telegraph & Telephone Company of Missouri, the applicant herein, took over by purchase the entire holdings of the Southeast Missouri Telephone Company, of which the Caruthersville exchange was a part. The records of the Southeast Missouri Telephone Company covering a period from March 28, 1904, to April 30, 1907, were found to be very incomplete. The records from May 1, 1907, to August 31, 1912, were kept so as to show the investment by exchanges.

On September 1, 1912, the records of said Southeast Missouri Telephone Company were transferred to the St. Louis offices of applicant company, and since that date have been kept under the supervision of the general auditor of the Southwestern Telegraph & Telephone Company, and at which time they were consolidated with the accounts of the applicant. The books of the Southwestern Telegraph & Telephone Company do not show the operations of the individual exchanges, but record only the transactions of the company as a whole. It may be well to state here that said company owns a large number of exchanges in the eastern half of Missouri, including one in the city of St. Louis.

The minutes of the Southeast Missouri Telephone Company show that it was organized under date of March 28, 1904, and was incorporated April 14, 1904, with a capital stock of $150,000. This was increased to $300,000 at a meeting of the stockholders of said company under date of July 19, 1906. The balance sheet of the entire holdings of the Southeast Missouri Telephone Company as of December 31, 1912, which includes the exchange at Caruthersville, showed a total investment of $438,166.01. There were other working assets and treasury bonds bringing the total assets up to $471,495.40. The capital stock outstanding at that date was $287,625 and the bonded debt was $15,000. Notes payable amounted to $60,041.67. There were other small liabilities which brought the total liabilities up to $471,495.40. The capital assets at that date con-

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sisted of exchanges, lines and equipment, $213,954.91; toll lines and wire, $135,208.43. The Caruthersville exchange was represented by exchange lines and equipment to the amount of $24,124.74. The books of the Southeast Missouri Telephone Company as of December 31, 1912, detailed an account called "contracts and licenses," to the amount of $77,515.95. In analyzing this account it was found to consist of items credited to capital stock which had been charged to investment in exchanges and toll lines and later credited to that account and charged to contracts and licenses, amounting to $12,622.20; items credited to discount on stock and charged to investment in exchanges and toll lines and later credited to that account and charged to contracts and licenses, $47,293.75; items credited to discount on stock $17,600,—making a total of $77,515.95. This account was deducted by Mr. McShane, accountant for the Commission, from the total value of assets which were taken over by applicant company on December 31, 1912, as having no value. The capital stock of the Southeast Missouri Telephone Company amounts to $287,625. The proof shows beyond dispute that a large part of said capital stock was issued by the Southeast Missouri Telephone Company for 50 per cent of its face value. The records disclose that 50 per cent of the first issue, August 1, 1904, to November 10, 1905, was charged to discount, and presumably the other 50 per cent was received in cash. From July, 1906, to March, 1907, there was further charged to discount on capital stock $43,512.50 and the balance presumably was in cash.

In April, 1911, there was a stock dividend declared of $6,400. It would thus appear that the total amount received from the sale of stock for cash by the Southeast Missouri Telephone Company was $119,112.60. There has been reserved for depreciation $55,429.55. The total capital investment of the Southeast Missouri Telephone Company was shown to be $438,166.01, and is accounted for as follows: Cash received from the sale of capital stock $150,090.30; cash received on account of notes payable $60,041.67, making a total of $210,131.97; items credited to capital stock and charged to franchises, $12,622.20; discount on capital stock transferred to contracts and licenses, $64,893.75,—making a total of $287,647.92, thus leaving a

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balance of $150,518.09 which must have been paid out of the earnings of the company.

The record further discloses that there were dividends paid by said company amounting to $39,596.26.

The Southwestern Telegraph & Telephone Company took over by purchase the assets and liabilities of said Southeast Missouri Telephone Company as of December 31, 1912, for which it paid $294,521.95. Thus it appears that the book value of the capital assets taken over was $438,166.01, less the contracts and license account, which did not represent any value, leaving the book value of the capital investment of said company at $360,650.06, less reserve for depreciation, $55,429.55. This gives a net value of the capital investment of said company taken over by applicant as of said date at $305,220.51. The records further disclose that the applicant company transferred the assets of the Southeast Missouri Telephone Company onto its books as of January 1, 1913, at an appraised value of $385,000. If we deduct from that amount the actual amount paid, $294,521.95, leaves an excess of the appraised value over the cost to applicant company of $90,478.05. The company's books showed that there had been paid for the capital stock of the Southeast Missouri Telephone Company the sum of $247,373.25. This included an amount of $12,892.95, which represented the interest on the amount advanced by the Missouri & Kansas Telephone Company (an allied Bell property). It appears that said Missouri & Kansas Telephone Company purchased, on behalf of the Southwestern Telegraph & Telephone Company 2,658.45 shares of the capital stock of the Southeast Missouri Telephone Company, and this was later turned over to the applicant company.

Accountant McShane's audit shows that the total book investment in the Caruthersville exchange at December 31, 1913, amounted to $24,614.50. To this amount he added "incompleted estimates" in the sum of $7,701.71. This last item represented new construction not yet in service at the time the audit was made, as there was certain work necessary to the com-

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pletion of same. The accountant had to begin with an unverified item of $10,000 as representing the Caruthersville exchange, as he was unable to verify same from any records obtainable. It is to be noted that the value of the Caruthersville exchange as shown by the books, as above stated, does not disclose any item for depreciation of the old plant properties.

An exhibit was submitted by applicant company showing the original plant value of the exchange at Caruthersville at September 1, 1913, before rebuilding, to be $21,337, and after rebuilding to be $27,700. We understand that the figures submitted by the company showing its book value do not show any item for depreciation of that part of the Caruthersville plant not replaced new.

IV. *Estimates of Cost of Reproduction New.*—Engineer Player, for the Commission, submitted an estimate of the cost of reproduction new of the Caruthersville exchange, without depreciation, as of date February 26, 1914, as follows:

Table No. 1.

Total Summary of Player's Appraisal as of February 26, 1914.

	Reproduction Value, New.
A. Land	.....
B. Distributing system	$17,308
C. Buildings and miscellaneous structures	.....
D. Exchange equipment	3,054
E. General equipment	.....
F. Paving	.....
Physical plant	$20,362
Engineering and supervision 10%	2,036
Interest during construction 6%—3 months	305
	$22,703
H. Furniture and fixtures	392
Material and supplies	1,146
Tools	196
Total	$24,437

Witness Bloom, when testifying for applicant company, was asked as to the depreciated value of the exchange, and stated in reply that the estimated value of $26,419, as contained in certain exhibits submitted by the company, would represent,

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when depreciated, a value not to exceed $20,000 as the present value of the exchange, but that he did not consider it proper to take the present value as the basis for rate making.

Witness Stephens, plant engineer for applicant company, when testifying, stated that the replacement cost of the present plant was about 70 per cent of the cost of the plant new, or, in other words, that the plant should be depreciated about 30 per cent. We understand this depreciation to be only figured on the old part of the plant left in the exchange, as this witness further testified that, to consider the plant as a whole, both the old and the new equipment, as it would contain when rebuilt, that the rate of accrued depreciation should be "somewhere between 15 and 20 per cent."

If Mr. Player's estimated appraisal of cost of reproduction new of $24,437 is depreciated 20 per cent, as testified by witness Stephens, we find the amount of accrued depreciation would be $4,487, and that the cost of reproduction new less such accrued depreciation would be $19,550 for the Caruthersville exchange.

If we take the item of $19,603, as shown in table 2 submitted by applicant company, as the value of the old plant retained and figure accrued depreciation of 30 per cent, as testified by witness Bloom, it would give the sum of $5,880 as the amount of accrued depreciation, and which, if taken from Mr. Player's appraisal of $24,437, would make his depreciated appraisal the sum of $18,557.

Mr. Player explained his appraisal as having been made on the theory of reproduction new without any depreciation, inasmuch as he thought that that part of the old plant still in use would render as efficient service as if new.

We find that Mr. Player's estimates of costs new, if properly depreciated according to the testimony of witnesses Bloom and Stephens, would give an estimated value of about $19,550.

Witness Bloom, manager of applicant company, and engineer Stephens submitted estimates of cost of reproduction new of the Caruthersville exchange, as follows:

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Table No. 2.
The Southwestern Telegraph & Telephone Company (Missouri)
Caruthersville Exchange.
Statement "B"—Plant Inventory and Appraisal.

Summary of Plant Inventory and Appraisal.	Present Plant.	Plant Displaced, Estimated.	Present Plant Retained.	New Plant, Estimated.	Total New Plant and Present Plant Retained.
Equipment—					
Central office equipment ..	$2,935	$1,035	$1,900	$2,296	$4,196
Sub-station equipment	6,251	1,284	4,967	1,386	6,353
Total equipment	$9,186	$2,319	$6,867	$3,682	$10,549
Exchange Lines—					
Poles lines	$7,853	$851	$7,002	$838	$7,840
Aerial cable	4,677	3,137	1,540	6,802	8,342
Aerial wire	4,473	1,643	2,830	1,132	3,962
Underground conduit	.....	.....	.....	300	300
Underground cable	.....	.....	.....	387	387
Right of way	230	.....	230	.....	230
Total exchange lines ..	$17,233	$5,631	$11,602	$9,459	$21,061
Total telephone plant	$26,419	$7,950	$18,469	$13,141	$31,610
Miscellaneous Property—					
Supplies	$751	.....	$751	.....	$751
Office furniture and fixtures	205	.....	205	.....	205
Tools	53	.....	53	.....	53
Teams and vehicles	125	.....	125	.....	125
Total miscellaneous property	$1,134	.....	$1,134	.....	$1,134
Total telephone plant and miscellaneous property	$27,553	$7,950	$19,603	$13,141	$32,744

The company's valuation, as presented in table No. 2, shows no depreciation of the old part of the plant left in the reconstruction. If it should be depreciated 30 per cent, as testified by witness Bloom, we have the item of $5,880 as representing the depreciation, and the depreciated value of the plant $26,864.

[2] V. *A. T. & T. Co. Transmitters and Receivers.*—The evidence discloses that the American Telephone & Telegraph Company owned and had in use, in the Caruthersville exchange, at the date of appraisal, 161 transmitters of the value of $1.50

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each; 147 receivers of the value of $1.14 each; and 147 induction coils, No. 20, of the value of $.55 each, making the aggregate total value of $489.93.

For the reasons stated by Commissioner Kennish in the St. Louis Rate Case, these instruments will be capitalized as though owned by applicant company, and a rate of return allowed thereon.

[3] VI. *Working Capital and All Other Values.*—The Commission will also add $800 for working capital, this sum being equal to at least one-twelfth of the total gross annual income of applicant company, which we deem a reasonable amount. Any and all other values of any intangible nature will be considered as pointed out in McGregor-Noe Hardware Co. v. Springfield Gas & Electric Co. 1 Mo. P. S. C. R. 468.

[4] VII. *Fair Present Value.*—Upon a full consideration of all the evidence introduced in this case, the Commission finds as a fact that the fair present value for determining reasonable and just rates in this case, of all the property of the local exchange at Caruthersville, of applicant company, including the transmitters, receivers, and induction coils furnished by the American Telephone & Telegraph Company as hereinbefore set out, as of date February 26, 1914, used and useful by applicant company in the service of the public, considering said exchange and each class of its property as a going concern, and taking into account the fact that said exchange is in successful operation, and including engineering, supervision, and interest during construction, organization, and general expenses, legal expenses, contingent expenses, insurance, general contractor's profit, promotion, and other development expenses, working capital, and including all other elements of values, tangible and intangible, as used in the public service in furnishing telephonic service, is the total sum of $25,000, which said sum is hereby fixed and determined by the Commission to be the fair present value of said exchange as of said date, for the purpose of determining reasonable and just rates in this case.

VIII. *Income and Operating Account.*—The corrected profit and loss account, including overhead expenses, for the year ending December 31, 1913, is shown by the report of the accountants for the Commission and the company to be as follows:

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Table No. 3.

Corrected Profit and Loss Account, Including Overhead Expenses for the Year Ended December 31, 1913.

	Commission's Corrected Figures.	Company's Report.	Difference.
Revenue—			
Exchange revenue	$7,383.88	$7,383.88	.....
Message tolls (25% of gross revenue)	1,269.85	1,281.65	$11.80[1]
Telegraph tolls (25% of gross revenue)	7.04	7.04	.....
Telegraph commissions	461.39	461.39	.....
Other telegraph charges	402.77	402.77	.....
Pole contacts at 10 cents each	.....	84.00	84.00[2]
Total revenue	$9,524.93	$9,620.73	$95.80
Operating Expenses—			
Maintenance expenses	$2,761.58	$2,761.58	.....
Traffic expenses	3,354.96	3,354.96	.....
Commercial expenses	1,338.68	1,338.68	.....
General and miscellaneous expense	398.56	398.56	.....
Uncollectible accounts	62.40	62.40	.....
Taxes	155.74	151.34	$4.40[3]
Rents	214.00	214.00	.....
Insurance	78.55	78.55	.....
Total operating expenses	$8,364.47	$8,360.07	$4.40
Net profit on operations	$1,160.46	$1,260.66	$100.20
Add—			
Miscellaneous rent revenues	17.56	17.56	.....
	$1,178.02	$1,278.22	$100.20
Deduct—			
License revenue 4½%	$387.14	$387.14	.....
Depreciation	853.95	2,166.00	$1,312.05[4]
	$1,241.09	$2,553.14	$1,312.05
Net deficit	$63.07	$1,274.92	$1,211.85

[1] Toll receipts overstated in company's statement.

[2] Rental of pole contacts of toll lines. Nothing taken up on books for this.

[3] Statement approximates taxes on basis from March 1, 1913, to Feb. 28, 1914. We have taken actual amount taxes paid.

[4] Company estimates depreciation "before rebuilding." We have taken the actual proportion of amount reserved during 1914 applicable to Caruthersville.

[5] Thus it is shown from the above table that there is a deficit of $63.07, according to the corrected report by the Commission's accountant, after deducting the sum of $387.14, being the license revenue of 4½ per cent to the American Telephone &

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Telegraph Company, and a net income of $324.07, if we disallow the license revenue item of 4½ per cent. The report of the company's accountant shows a deficit of $1,274.92, after deducting $387.14, being the license revenue of 4½ per cent to the American Telephone & Telegraph Company. If we disallow the 4½ per cent item, the company still has a deficit of $887.78, according to its report.

We disallow the item of $387.14 for license revenue of 4½ per cent of the total gross income to the American Telephone & Telegraph Company for the very able and convincing reasons stated by Commissioner Kennish in the St. Louis Rate Case, the evidence of which, by agreement, on this point, was to be considered in this case.

Table No. 4.

The following table is taken from statement "D," which was filed in this case by applicant company, showing the estimated increase in revenue from the proposed increased rates:

Class of Service.	Present Rates.			Proposed Rates.			
	Sta.	Rate.	Annual Revenue.	Sta.	Rate.	Annual Revenue.	Annual Revenue Increase.
Business direct ...	91	$24	$2,184.00	....	.....	.....	
	25	21	525.00	115	$30	$3,450.00	
	4	30	120.00	....	.....	.....	
Total business..	120	.....	$2,829.00	115	.....	$3,450.00	$621.00
Residence direct..	210	$15	$3,150.00	230	$18	$4,140.00	
	27	12	324.00	....	.....	.....	
	3	13	54.00	....	.....	.....	
Residence—4-party	....	.....	.....	....	.....	.....	
Total residence..	240	.....	$3,528.00	230	.....	$4,140.00	$612.00
Grand total	....	.....	$6,357.00	....	.....	$7,590.00	$1,233.00

[6] By adding to the net revenue of $324.07, as above found by the Commission, the estimated increase in revenue of $1.233. if the new rates as provided for in ordinance No. 21 are permitted to become effective, we have the total net revenue of $1,-557.07 per annum.

If we estimate the rate of return at 7 per cent on the value of $25,000, we have the sum of $1,750, without any allowance for depreciation and contingent reserve. The estimated net return of $1,557.07 will fall short of this return by $192.93. The

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engineer for the Commission testified that the rate for depreciation and reserve should be at least 5 per cent on the value of the exchange. We think the company should be able to reduce its operating expenses of the Caruthersville exchange by prorating the salary of its local manager to the other exchanges under his supervision, as it did for the last two or three months of the year 1913. There may be other economies that may be practised to help increase its net earnings. Its business will doubtless increase since the rebuilding of its plant and the giving of better service.

The rates proposed to be charged, on comparison, are approximately those generally charged throughout the state in cities containing about the population of Caruthersville, and having a new exchange of the type and character of the one reconstructed in that exchange.

[7] The cities of this state were not given the power to regulate telephone rates until the enactment of §§ 9568 and 9569, Rev. Stat. 1909, by the legislature in 1907. State ex rel. Garner v. Missouri & K. Teleph. Co. 189 Mo. 83, 88 S. W. 41; St. Louis v. Bell Teleph. Co. 96 Mo. 623, 2 L.R.A. 278, 9 Am. St. Rep. 370, 10 S. W. 197.

Ordinance No. 21, amending § 2 of said ordinance No. 212, was enacted on November 7, 1904, and provides for its acceptance within thirty days after its passage and approval by the telephone company, grantee therein. It is clear that this ordinance was intended only as naming a contract rate, and not to become effective until accepted by the telephone company as therein provided.

It is further to be observed that the attempted passage of said ordinance No. 31 to repeal said ordinance No. 21, and regulate telephone rates, was on March 7, 1906, and prior to the passage of the statute authorizing cities to regulate telephone rates, other than by contract.

The proof discloses that at the date of the last hearing in these cases the Caruthersville exchange had been fully reconstructed by applicant company as provided for by said ordinance No. 21 with a "full metallic system of Bell telephones."

It was agreed at the close of the taking of testimony by counsel for the company and the city that should the question be consid-

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ered by the Commission of giving to the local subscribers of the Caruthersville exchange the additional service of the use of the toll lines in Pemiscot county to the several local exchanges located in said county for the rates proposed, then in that event additional evidence was to be offered, showing the cost of giving such toll service in connection with the local subscribers of the Caruthersville exchange. We think that after an actual test of the proposed rates for one year, the Commission will be in a much better position to hear such evidence and pass upon the merits of same.

The Commission will retain jurisdiction of the case for that purpose, and will permit the test of the proposed rates for a period of one year from September 1, 1915, and until otherwise ordered by the Commission, and will require monthly statements to be furnished by the company to both the Commission and the city, of its gross income and operating expenses, including all earnings from the toll charges from the Caruthersville exchange by its subscribers to all other local exchanges owned by said company in said county.

An order will be entered in conformity with the views herein expressed. All concur.

Note.—Establishment, increase or decrease of telephone rates, tolls, and charges; elimination of discrimination in favor of stockholders and owners of telephones.

In Re Interstate Teleg. Co. Application No. 124, Jan. 15, 1915, the California Commission held that an application for authority to establish rates did not require a formal proceeding, and dismissed the application, the matter having been adjusted without the necessity of such proceeding.

In Vermont Teleph. & Exch. Co. No. 2850, June 17, 1915, the Illinois Commission authorized an increase of the charge for switching rural service subscribers to $3.50 per annum, where the existing rates were less than the actual cost of service as ascertained upon apportioning the operating and maintenance expenses for town and rural subscribers on the basis of the number of telephones and the amount of town and rural traffic.

In Re Oregon-Washington Teleph. Co. U-F-126, April 14, 1915, the Oregon Commission, in permitting an increase in monthly rates for the purpose of allowing a discount of the same amount for prompt payment, held that the discount should approximate 10 per

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cent of the net bill, with enough added to avoid fractions and make the cents end with 0 or 5, with 25 cents as the maximum.

In Re Tri-County Farmers Telephone of Irene, Aug. 18, 1915, the South Dakota Commission held that Laws of 1909, chap. 389, § 6, as amended by Laws of 1911, chap. 218, § 4, requiring that all terminal fees for toll messages shall be uniform, and that no more than a maximum fee of 5 cents shall be charged, precluded making a charge, in addition to toll, to a nonsubscriber for the use of a subscriber's phone in reaching the toll line, since such charge would be a terminal fee which is always included in the fixed toll rate. It was also held in this proceeding that a nonsubscriber should be required to pay a reasonable rate for local calls over a subscriber's telephone, and that the company could not refuse to accept the local or long-distance business of a nonsubscriber, provided that the subscriber consents to the use of the telephone, and that a local rate for nonsubscribers has been established, and that, in the case of toll messages, no more than the regular toll rate is charged.

In Re Carter & W. Teleph. Co. June 23, 1915, the Wisconsin Commission authorized a horizontal increase of $3 per annum for all classes of service, where existing revenue would produce a return of only 1.4 per cent on the value of the property.

In Re Beaver Teleph. Co. June 23, 1915, the Wisconsin Commission, while holding that the fact that a debt was incurred for reconstruction purposes during a single year, would not necessarily indicate that an increase of rates should be granted, authorized an increase from 65 cents to $1 per month for rural telephones, where the existing rates normally would not produce sufficient revenue for maintenance of lines and for taxes, and subscribers made no objection.

The establishment, increase, or decrease of rates, tolls, and charges and rules relating thereto, have also been approved or ordered in various jurisdictions as follows:

Illinois.—In Re Bruce Mut. Teleph Co. No. 2559, July 23, 1915, increase from $3 to $4 per annum for rural party lines in and around Bruce; In Re Cordova Teleph. Co. No. 2299, Aug. 25, 1915, increase from $5 to $9 per annum in and around Cordova; In Re Inter-State Teleph. & Teleg. Co. No. 2274, Aug. 19, 1915, increases of 50 cents and $1 per month in main line and party-line residence and business rates in Hampshire, Makena, and Frankfort; In Re Antioch Teleph. Co. No. 3706, May 20, 1915, discontinuance of a reduced rate to owners of instruments; In Re Beecher City Teleph. Co. No. 3422, May 20, 1915, discontinuance of a reduced rate to owners of instruments; In Re Calhoun Teleph. Co. No. 3415, May 20, 1915, discontinuance of a reduced rate to owners of instruments, and a combined rate for a business telephone and a

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residence telephone which is less than the sum of the regular residence and business rates; In Re Jackson County Teleph. Co. No. 3460, Sept. 2, 1915, discontinuance of reduced rates to stockholders, and increase from 50 cents to 75 cents per month for rural party lines; In Re Kenney, C. & Farmers Mut. Teleph. Co. No. 3576, May 20, 1915, discontinuance of reduced rates to stockholders and to owners of instruments; rule requiring payment for service six months in advance held unreasonable.

Indiana.—In Re Lizton Mut. Teleph. Co. No. 1460, May 28, 1915, increase from $3 to $4 per annum for lines in and around Lizton; In Re People's Mut. Teleph. Co. No. 1582, July 9, 1915, increase from $5 to $8 per annum; In Re West Point Co-Op. Teleph. Co. No. 1405, June 4, 1915, increase from $1 per month, payable quarterly in advance, to $1.25 per month, payable at the end of each quarter; In Ex parte Flint-Kyle Teleph. Co. No. 1161, March 5, 1915, reduction from $1 to 75 cents per month for 3 and 4 party lines, and to 65 cents per month for 5 and 6 party lines in Odon; In Re Lafayette Teleph. Co. No. 1000, Feb. 1, 1915, reduction from $15 to $12 per annum for party lines in Lafayette and West Lafayette; In Re Monon & F. Teleph. Co. No. 1236, Jan. 8, 1915, reduction to 10 cents for messages between Monon and Francisville; In Re Mooreland Rural Teleph. Co. No. 1546, July 1, 1915, supplement No. 3 to P. S. C. I. No. 2, for rental rates and outgoing local calls, together with concurrence in tariffs of the Central Union Telephone Company, affecting toll-line charge for joint service was approved.

Kansas.—In Re Meriden Teleph. Co. Docket No. 880, Oct. 15, 1915, schedule covering business and residence individual lines and rural party and switching lines in and around Meriden; rules for the collection and refund of rentals and switching fees.

Michigan.—In Re Citizens Teleph. Co. T-85, June 29, 1915, increase of gross rates for the Lowell exchange, with reductions if paid quarterly in advance; In Re Coloma Teleph. Co. T-87, July 6, 1915, increase in exchange rate to $15 per annum; In Re Holt Rural Teleph. Co. T-86, June 17, 1915, increase of gross rates with reductions if paid quarterly in advance; In Re Michigan State Teleph. Co. T-62, April 27, 1915, increase at Harsen's Island and the St. Clair Flats in connection with the Algonac exchange; In Re North Parma Teleph. Co. T-84, May 26, 1915, increases from $10 to $12 per annum for business lines, from $7 to $10 for residence single lines, and from $7 to $9 for residence party lines; In Re Waldron Teleph. Co T-79, Feb. 11, 1915, increase from $10 to $12 per annum for business line; rules requiring payment quarterly in advance and extra charge to delinquents; In Re Wexford County Independent Teleph. Co. T-80, March 11, 1915, increase to $16 per annum for residence lines, to $18 for business individual

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lines, and to $17 for business party lines; rules requiring payment quarterly in advance and allowing reductions if made before specified time or if subscriber owns his telephone.

Nebraska.—In Re Johnston Teleph. Co. Application No. 2512, Sept. 10, 1915, increase of 25 cents per month for all classes of service with the same discount for prompt payment; rules governing payment of switching fees and toll charges of connecting independent rural lines; In Re Milburn & A. Teleph. Co. Application No. 2434, June 14, 1915, increase in exchange rate from $1 to $1.50 per month, payable six months in advance, with discount of 25 cents per month if paid within thirty days when due; In Re Nebraska Teleph. Co. Application No. 2435, June 14, 1915, increase of toll rates between Spalding and Bartlett, and between Spalding and Ericson from 15 cents to 25 cents for the initial period of three minutes; In Re Union Mut. Teleph. Co. Application No. 2326, Feb. 15, 1915, increase in exchange rate from 75 cents to $1 per month; In Re Ainsworth Teleph. Co. Application No. 2385, June 8, 1915, increase from $3 to $4 per annum for farm-line switching; In Re Ansley Teleph. Co. Application No. 2312, Jan. 26, 1915, reduction of toll rates between Ansley and Arcadia from 20 cents to 15 cents, establishment of flat rate of 50 cents per month for Ansley subscribers desiring service of Arcadia exchange, discontinuance of Westerville toll station; In Re Nebraska Teleph. Co. Application No. 2356, March 13, 1915, reduction from $30 to $24 per annum for residence individual lines, from $24 to $18 for residence two-party lines, and cancelation of $18 for four-party lines; In Re Nebraska Teleph. Co. Application No. 2372, April 5, 1915, reduction in toll rates between Wausa and enumerated stations; In Re Nebraska Teleph. Co. Application No. 2457, July 24, 1915, reduction in toll rate between Atkinson and Amelia from 20 cents to 5 cents for the initial period of three minutes; In Re Union Teleph. Co. Application No. 2314, Jan. 26, 1915, reduction of toll rates between Wausa and Bloomfield from 25 cents to 15 cents, between Bloomfield and Center and between Bloomfield and Cropton from 25 cents to 20 cents; In Re Chardon Teleph. Co. Application No. 2512, Sept. 16, 1915, $1.75 per month for farm lines, $1 per month for extension business telephones and 50 cents per month for extension residence telephones, as applicable to exchange of Cherry County Telephone Company, of Valentine, were established; In Re Chester Teleph. Co. Application No. 2329, Feb. 17, 1915, $1.75 per month for individual business lines, $1.25 for individual residence lines, $1.50 for metallic farm party lines, with discount of 25 cents per month for prompt payment was established; In Re Douglas Teleph. Co. Application No. 2371, March 26, 1915, $2.50 per month for business telephone and residence telephone connected on the same line was established; In Re Nebraska

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Teleph. Co. Application No. 2389, April 13, 1915, exchange rate schedule for metallic circuit service at Gretna was established; In Re Palmer Teleph. Co. Application No. 2451, July 20, 1915, $1.75 per month for business telephones and $1.25 for residence and country telephones, with a discount of 25 cents per month for prompt payment was established; In Re Pierce Teleph. Exch. Application No. 2449, July 20, 1915, $1.25 per month for two-party residence lines, and $3 where two business firms make use of the same telephone, both names to appear in the directory was established; In Re Farmers Teleph. Co. Application No. 2471, July 29, 1915, $2.65 per month for two business firms using the same telephone, both names to be published in the directory, to apply to exchanges at Dodge, North Bend, Scribner, Snyder, and Webster was established; In Re Republican Valley Teleph. Co. Application No. 2318, Feb. 1, 1915, $1.25 per month in advance for residence telephones, private line grounded circuit and four-party line metallic circuit connected with the Franklin exchange was established; In Re Union Teleph. Co. Application No. 2367, March 22, 1915, 5 cents for local messages from pay stations at Wausa, Bloomfield, and Crofton, was established; In Re Nebraska Teleph. Co. Application No. 2388, April 13, 1915, $3 per annum for farm-line switching where farmers own and maintain lines and equipment up to limits of city of Tekamah was established; In Re Curtis Teleph. Co. Application No. 2402, May 5, 1915, 50 cents per month for extension phones was established; In Re Farmers & M. Teleph. Co. Application No. 2437, June 17, 1915, $2 for installation, to be credited to patrons if telephones are kept in the same location for one year was established; In Re Hamilton County Farmers Teleph. Asso. Application No. 2294, January 15, 1915, $3 for installation of desk telephones was established; In Re Nebraska Teleph. Co. Application No. 2387, April 13, 1915, change in listing of Nantasket for toll business from direct rate to "Same as Ravenna;" In Re Nebraska Teleph. Co. Application No. 2448, July 16, 1915, cancelation of rate of $2 per month to Battle Creek subscribers connected with the Norfolk exchange.

Oregon.—In Re Western Teleph. Co. Clyde E. Carlos, owner, U-F-123, March 18, 1915, increases varying from 25 cents to $1 per month for residence, business, and suburban individual and party lines in Hubbard.

South Dakota.—In Re Home Teleph. Co. Jan. 7, 1915, increases in Georgetown, after 600 stations are served; In Motley v. Dakota Cent. Teleph. Co. F-194, May 22, 1915, single rate of $1 per month for all classes of service at Frankfort exchange, changed to base rates of $2 for business telephones, $1 for residence telephones, $1.25 for rural party lines, with a further increase of 25 cents per month and a similar discount for prompt payment; switch board

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Wisconsin.—In Re Cameron Farmers Teleph. Co. April 29, 1915, increase to 75 cents per month for rural telephones, $1 for residence telephones, and $1.25 for business telephones in and around Cameron; In Re Morris Teleph. Co. April 29, 1915, increase to 75 cents per month for residence telephone and $1.25 per month for business telephones, all subscribers furnishing and maintaining their own telephones; In Re Pigeon Valley Farmers' Teleph. Co. June 9, 1915, increase from $6.75 for stockholders and $8 for nonstockholders to $12 per year for all subscribers in Pigeon Falls; In Re Sandusky Teleph. Co. April 11, 1915, increase from $10 to $12 per year for rural lines; In Re Barnes Teleph. Co. and Iron River Teleph. Co. May 18, 1915, graduated toll charge from 10 cents to 25 cents for messages between Barnes and Iron River reduced to 5 cents or 10 cents, as the message originates within or without a radius of 6 miles from Iron River, with option to Barnes subscribers to obtain flat rate service into Iron River at $3 per year.
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3. A water company was permitted to make slight increases in its commercial and domestic rates to conform to its authorized charges in another city, in order to secure uniformity in accounting, where no objection to the proposed increase was made. Re San Jose Water Co. (Cal.) 706.

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6. Automobiles owned by a street railway company should be entered under "Miscellaneous Equipment" in its returns; and the salaries of the general manager and the superintendent should not be charged to "maintenance," but to "general and miscellaneous expense," in accordance with the uniform system of accounts for electric railways prescribed by the Interstate Commerce Commission. Re Norfolk & B. Street R. Co. (Mass.) 411.

7. An amount due a municipal water utility from the city, constituting the difference between charges for water furnished the city and funds supplied by the city for extensions, should be listed under "accounts receivable" in the utility's assets on its balance sheet, and not under "depreciation reserve fund," and surplus should be listed as "city equity." Re Light & Water Commission (Wis.) 539.

8. Charges of a street railway company for supplies sold and equipment rented to other companies should be entered in explicit form in its journal and posted to ledger accounts, rather than recorded in the cash book after payment is made. Re Norfolk & B. Street R. Co. (Mass.) 411.

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9. In the accounting of a telephone company, toll and exchange service should be kept separate, so that it may be possible to determine what the rates for each class should be, and where a company has failed to do this it should make the necessary changes in its accounts so that they may show the value of the toll property and the cost of that part of the business. Re Crownover Teleph. Co. (Neb.) 571.

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2. An order of the Public Utilities Commission relating to the number of street railway tracks and the kind of rails to be used, on a new bridge used jointly by the city and a street railway company, is an administrative matter, and will not be interfered with by the courts where it appears to have been made after hearing regularly had and is supported by evidence. Appeal of Norwalk (Conn.) 294.

3. The Connecticut supreme court of errors can determine the bounds of power of the superior court and the extent of its duty in reviewing an order of the Public Utilities Commission fixing the equitable portion of the expense of the construction of a bridge which a street railway company, using the bridge, is required to pay, and may decide what considerations should be regarded in an inquiry of that nature, but cannot go beyond that unless the judgment be clearly inequitable. Appeal of Norwalk (Conn.) 294.

4. Upon the reversal of a judgment dismissing the petition of a city in certiorari to review the order of a Public Service Commission upon the ground that certiorari was not the proper remedy, it is not necessary to remand the case to the lower court for findings of fact, if the petition of the city alleging that the rates fixed were too high was heard together with a petition of the gas company that the same rates were too low, and the court thereupon made findings of fact which revealed its view that the rate was substantially correct on both sides. Passaic v. Public Utility Comrs. (N. J.) 625.

5. By Const. art. 9, § 22, it is made the duty of the Corporation Commission, upon making an order that intrastate passengers on trains, desiring to continue their journey within the state beyond the station to which tickets are originally purchased, shall be permitted to pay the regular fare, and no penalty shall be collected in excess of the regular fare, unless the carrier gives them an opportunity to purchase a ticket at the station to where they were originally destined, to make findings of fact upon which the order is based, and, on appeal to this court from such order, to certify the facts found by it to this court. And where the Corporation Commission fails to make and certify such findings of fact, this court may, under said section of the Constitution, remand the case to the Commission, with directions so to do and to certify the same as stated. Atchison, T. & S. F. R. Co. v. State (Okla.) 265.

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I. In case of a single utility.

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a. Expenses.

1. The division of central office telephone expenses on a per station basis is an unreliable method of computing telephone rates, since such expenses are in a large measure dependent upon the number of subscribers served which may be determined by a "peg count" or traffic study of the calls handled through the exchange. Re Moweaqua Teleph. Co. (Ill.) 857.

2. Taxes assessed against the property of a natural gas company supplying several communities should not be apportioned between the communities on an investment basis, where they are paid upon a gross revenue basis. Re Southern Counties Gas Co. (Cal.) 197.

3. In ascertaining the earnings of one of the two departments of a utility which is one of several public service corporations jointly managed with many expenses in common, the Georgia Commission apportioned the common expenses between the corporations upon the basis of the percentage of the gross earnings of each company to the total of all, and, using the sums apportioned to the particular utility, apportioned the expenses common to both departments in a similar manner. Re Macon Railway & Light Co. (Ga.) 648.

4. In ascertaining the earnings from the commercial and residential lighting and power business of a utility which also supplied the municipality with light and operated a street railway, the Georgia Commission apportioned the total tax charges upon the basis of the percentage of the book cost value of the electric light and power property, including the municipal system, to the total book cost value of all property, distributing the charge against the electric department between the commercial and residential lighting and retail power, and municipal lighting, upon a similar percentage basis. Re Macon Railway & Light Co. (Ga.) 648.

5. In ascertaining the earnings of one of the two departments of a utility which is one of four public service corporations owned by substantially the same interests, with substantially the same general organization conducting the four businesses jointly, with many expenses

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APPORTIONMENT—*continued.*
in common, the intercorporate relations must be taken into consideration, assigning to each company its direct revenues and expenses, apportioning between them the expenses common to all, and also apportioning the expense common to both departments.
Re Macon Railway & Light Co. (Ga.) 648.

b. Values.

6. No part of the valuation of the rural lines of a telephone company should be charged to a city exchange, nor should any part of the valuation of the city exchange be charged to the rural lines in determining the reasonableness of the rate of the company for a city service, where a statute provides that rural telephone lines shall receive service at a city exchange upon the payment of 25 cents per month for each telephone instrument on the rural party line connected. Re Webster Teleph. Co. (S. D.) 516.

7. An apportionment of the investment in gas and transmission lines, whereby 14.5 per cent of the total cost is prorated to a city the patrons in which consume only 5.7 per cent of the total amount of gas transmitted through the lines, places an undue burden upon such patrons. Re Southern Counties Gas Co. (Cal.) 197.

II. In case of joint enterprise.

a. Expenses.

8. In providing for the apportionment of the cost of a bridge between a municipality and a street railway company using the bridge under a statute requiring the railway company to pay its equitable portion of the expense of constructing the bridge, the element of cost of strengthening the bridge for street railway service must include the cost of strengthening the entire bridge, and not merely that part of the bridge over which the cars are to be operated. Appeal of Norwalk (Conn.) 294.

9. Payment by a railway company of the additional cost of strengthening a bridge for street railway service does not meet the statutory obligation to pay its equitable portion of the expense of constructing a bridge used by it; but the company is required to pay its equitable portion of the expense of the entire bridge. Appeal of Norwalk (Conn.) 294.

10. In determining the equitable portion of the expense of constructing a new city bridge which a street railway company, using the bridge, is required to pay, the prospective benefit to the company and the prospective use of the bridge by it, as well as the present use, must be taken into consideration. Appeal of Norwalk (Conn.) 294.

11. In determining the equitable portion of the expense of constructing a new bridge which a railway company, using the bridge, is required to pay, the following considerations, if present, should be taken into account: The additional cost of strengthening the entire bridge for street railway service; the increased size of the bridge due to pro-

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APPORTIONMENT—*continued.*
vision for an additional track authorized by the Public Utilities Commission; the part of the surface of the bridge occupied by the railway in the operation of its cars, and the right of exclusive use of that part when required by it; the permanent occupation of the bridge by its tracks, poles, wires, and overhead equipment; the special construction required for its exclusive service; the relative use of that part of the bridge devoted to the railway traffic by the railway and by the other traffic thereon; the relative wear and tear upon the bridge and its draw by the railway and by the other traffic thereon; the character and permanency of the bridge and the cost of its maintenance and the depreciation upon its investment; the impaired life cost of the bridge due to the railway; the saving to the railway in the maintenance and cost of operation; the decrease in liability for accidents owing to the increased width of the bridge and draw; the relief from congestion due to the increased width of the draw, and the saving of time in operation of cars by the change from a swinging to a lift draw.
Appeal of Norwalk (Conn.) 294

12. In apportioning the cost of a bridge between a municipality and a street railway company using the bridge, the cost to the railway company of paving should not be considered where its obligation in this respect is governed by statute; likewise the cost of rails, ties, ballast, wires, cables, and other special work is not to be considered upon the ground that these are ordinary incidents of putting the railway in condition for fulfilling its duty of operation. Appeal of Norwalk (Conn.) 294.

13. The contribution made by the state for the erection of a new city bridge should not be considered in determining the equitable portion of the cost of construction which a street railway company, using the bridge, is required to pay, since the contribution was for the purpose of relieving the city from a part of the cost which the state should bear, upon the theory that bridges upon main thoroughfares are of value to the public generally. Appeal of Norwalk (Conn.) 294.

14. In determining the railway company's portion of the expense, exclusive of paving, for filling the approaches to a bridge erected under a statute providing for the apportionment of the cost of the bridge between a municipality and a street railway company using the bridge, the court should take into consideration the statute providing that the railway shall conform the grade of its tracks to the established grade of the highway when changed, and shall pay one half the cost of necessary excavating, filling, resurfacing, paving, or other construction work within lines 2 feet on the outside of each outer rail of such tracks. Appeal of Norwalk (Conn.) 294.

15. A city was ordered to pay two thirds and a street railway company one third of the necessary expense of repairing a highway bridge over which the tracks of the street railway were laid. Re Rockland (Me.) 35.

b. Revenues.

16. Upon directing the establishment of a joint 5 cent fare with-

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APPORTIONMENT—*continued.*
in the city limits, by giving and honoring free transfers by the two street railway companies operating in the city, the Commission ordered that the entire fare receipts from transfer passengers should be given to the one company upon finding that the average distance traveled on its lines by transfer passengers would be much greater, and that the maximum distance a transfer passenger could ride on the line of the other company was about five blocks; that it is not required by its franchise to furnish free transfer privileges while the other company is required to do so; and that it furnishes the power, equipment, operators, etc., for the operation of the other company for a compensation that is barely adequate to cover the cost of the service rendered, and that the award of the entire transfer fare receipts would tend to equitably adjust matters. Green Bay v. Bay Shore Street R. Co. (Wis.) 619.

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AUTOMOBILES.

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I. Jurisdiction, powers, and functions of Commissions.

Delegation of power to Public Service Commission to regulate and control operation of jitneys, see CONSTITUTIONAL LAW, 13.

1. Persons, firms, or corporations operating motor busses or motor vehicles along defined routes in the District of Columbia for hire or for the transportation of persons are engaged in the business of common carriers within the meaning of the Public Utilities law, and are therefore within the jurisdiction of the Commission. Re Jurisdiction of Commission over Motor-Bus Lines (D. C.) 642.
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AUTOMOBILES—*continued.*

2. Jitneys operated in the same portion of a city in which street cars are operated and in more remote parts where there are no car lines, maintaining regular routes, schedules, and service, carrying indiscriminately all persons desiring to ride, and charging a uniform fare, are common carriers of persons, and are also engaged in a public service business, within the operation of a statute extending the jurisdiction of the Commission over common carriers of passengers and those engaged in any public service business, irrespective of whether the operators are a corporation, firm, or individual. Smith v. Nunnelly (W. Va.) 177.

3. Under the Public Service Commission act, which requires every person, firm, or corporation engaged in a public service business to maintain adequate and suitable facilities, and to give reasonable, safe, and sufficient service without discrimination, and empowers the Commission to enforce such facilities and service, the Commission has the right to regulate and control the operation of jitneys which are common carriers of persons and engaged in a public service business. Smith v. Nunnelly (W. Va.) 177.

4. The West Virginia Commission deemed it unwise or unnecessary to establish rules and regulations for the operation of jitneys in a city whose charter power in such respect was much broader than that of the Commission and had been exercised by the enactment of a comprehensive ordinance, and which city could supervise and control jitneys more effectively than the Commission. Smith v. Nunnelly (W. Va.) 177.

II. Regulation.

a. In general.

As to constitutionality of ordinances regulating automobiles operated as jitney busses, see CONSTITUTIONAL LAW, 2–4.

Power of the legislature to prescribe the number, character, routes, rates, and hours of service of common carrying vehicles upon highways or delegate such power regulation to municipalities, see LEGISLATURE, 1.

5. An ordinance is not unreasonable in requiring the operation of a jitney for not less than twelve consecutive hours out of twenty-four, where it is customary for jitneys to operate on an average of fifteen hours a day, and the ordinance excepts Sundays, a reasonable time for meals, and time in case of accidents, breakdowns, or other casualties. Ex parte Sullivan (Tex.) 441.

6. An ordinance is not unreasonable in prohibiting the operation of a jitney off of, or away from, a selected route and termini, where the operator makes the selection and may apply to the city for a change in the route or termini at any time. Ex parte Sullivan (Tex.) 441.

7. A municipal ordinance requiring one to have thirty day's experience in the operation of an automobile in the city before being permitted to operate a jitney bus for the transportation of passengers on the public streets is not invalid as interfering with a right of a person to

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AUTOMOBILES—*continued.*
pursue a lawful calling, but is a reasonable exercise of the police power in the interest of public safety. Ex parte Cardinal (Cal.) 282.

b. Licenses.

Power of municipality to license and regulate use of, upon the streets, see MUNICIPALITIES, 3.

8. A license fee of $10 per annum for a 5-passenger jitney requiring constant police surveillance, exacted under an ordinance enacted under express charter authority which does not authorize the levying of an occupation tax, is not an occupation tax and is not unreasonable in amount, although a license receipt is headed "City Occupation Tax," where the receipt was issued under a different automobile ordinance on an old blank showing on its face that it was the form used in issuing a liquor tax license. Ex parte Sullivan (Tex.) 441.

9. A license ordinance permitting the refusal of an application for a license to operate a jitney over a particular route is not unlawful or unreasonable, or obnoxious to constitutional or statutory provisions against monopolies, where it would be dangerous or hazardous to public safety if there was no limitation to the number of jitneys operating on a street. Ex parte Sullivan (Tex.) 441.

10. A license to operate a public automobile under an ordinance prescribing regulations prior to the advent of jitneys does not authorize the operation of a jitney under a subsequent ordinance prescribing more stringent regulations for such vehicles and charging a greater license fee, especially where the latter ordinance provides for a refund on the surrender on the unexpired portion of the prior license. Ex parte Sullivan (Tex.) 441.

11. An operator of a jitney cannot be heard to complain that a license fee varying from $10 to $30 according to the number of passengers carried in a car is an occupation tax as to the larger fees, where he is in the $10 class, and it does not appear that any jitney within a higher class has ever applied for a license. Ex parte Sullivan (Tex.) 441.

12. An operator cannot attack the provisions of an ordinance that an application for a license to operate a jitney over a particular route may be granted as applied for, or in a modified form, or be refused under certain conditions, where he has made no application for a license. Ex parte Sullivan (Tex.) 441.

c. Security or indemnity insurance.

13. A municipal ordinance requiring the owners of jitney busses engaged in the transportation of passengers to furnish security in the shape of a bond or an insurance policy, in a reasonable amount, to indemnify persons who may be injured or damaged by negligent or illegal operation, is a proper exercise of the police power for the protection of the public. Ex parte Cardinal (Cal.) 282.

14. A municipal ordinance requiring the owners of jitney busses engaged in the transportation of passengers to give a bond in the sum of

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AUTOMOBILES—*continued.*
$10,000 conditioned that he will pay all damage that may result to any person or property from the negligent operation or defective construction of the jitney bus, or from any violation of law; or to keep in force an insurance policy with a total liability of $10,000 insuring the owner against loss by reason of damage that may result to any person or property from the operation of the jitney bus, is not unreasonable. Ex parte Cardinal (Cal.) 282.

15. A requirement that persons engaged in the operation of jitney busses for the transportation of passengers shall furnish a bond given by a responsible surety company authorized to do business under the laws of the state, to the exclusion of personal sureties, is a valid provision. Ex parte Cardinal (Cal.) 282.

16. Under a charter giving a city control of its streets, with power to regulate the use thereof by vehicles carrying passengers for hire, and charging it with the duty to enforce its police power to protect the life and property of its inhabitants, it has power to pass an ordinance requiring an operator of a jitney to procure a contract from some insurance corporation indemnifying his liability for injury to persons other than passengers and to property, where a large number of accidents have occurred from the operation of jitneys. Ex parte Sullivan (Tex.) 441.

17. An ordinance requiring an operator of a jitney to procure a contract from some insurance corporation indemnifying his liability for accidents is not unreasonable or oppressive in not permitting him to procure a contract from a person, where it does not appear that there is only one corporation that will issue such a contract, and where the city has had unsatisfactory experience with personal surety bonds. Ex parte Sullivan (Tex.) 441.

BAD ACCOUNTS.
Monthly allowance for, see RETURN, 22.

BASIS.
Station basis as method of division of central office telephone expenses, see APPORTIONMENT, 1.
For computing depreciation, see DEPRECIATION, 5–7.

BENEVOLENT PURPOSES.
Reduced rates to, see DISCRIMINATION, 29.

BETTERMENTS.
Amount expended from surplus earnings for additions and improvements as equivalent to depreciation reserve fund, see DEPRECIATION, 3.
Telephone company directed to provide for, out of capital secured through sale of stock, see RETURN, 2.
Security issues for, see SECURITY ISSUES, 14, 15.
Consideration of proposed improvements to telephone plant in valuation, see VALUATION, 11.

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BILLS.
Payment of bills for service, see PAYMENT.

BILLS AND NOTES.
See SECURITY ISSUES.

BLOCK RATES.
Approval of schedule for block gas rates, see ORDERS, 2.

BOND DISCOUNT.
Method of treatment in accounting, see ACCOUNTING, 4.
Amortization of, see RETURN, 7.
Consideration of, in valuation, see VALUATION, 21.

BONDS.
Validity of regulation requiring operator of jitney bus to furnish security, see AUTOMOBILES, 13–17.
Proportion of, to stock, see SECURITY ISSUES, 24.
See generally SECURITY ISSUES.

BOOK VALUE.
Adjustment of, upon destruction by fire of a street car barn and rolling stock, see ACCOUNTING, 5.

BRIDGES.
Interference by court of order of Commission fixing the number of street railway tracks and the kind of rails to be used on a city bridge, see APPEAL AND REVIEW, 2.
Apportionment of cost of, between municipality and street railway companies using bridge, see APPORTIONMENT, 8–14.
Apportionment of cost of repairs between a municipality and a street railway company using the bridge, see APPORTIONMENT, 15.
Amount allowed for depreciation of toll bridge, see DEPRECIATION, 21.
Discrimination in rates for use of, see DISCRIMINATION, 11.
Validity of statute authorizing Commission to determine the number of tracks to be laid by a street railway company operating upon a city bridge, see CONSTITUTIONAL LAW, 1, 14.
Effect of contract between city and street railway company upon the right of the Commission to regulate bridges erected by the city upon which street cars are operated, see CONSTITUTIONAL LAW, 9.
Consideration of rental value of house of toll master as income, see RETURN, 5.
Amount allowed for operating expenses of toll bridge, see RETURN, 20, 21.
Amount of return of toll bridge, see RETURN, 37.

1. In drawing any conclusions regarding the traffic on a toll bridge, the Commission must be guided to a large extent by the geo-

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BRIDGES—*continued.*
graphical location of the bridge with relation to its patrons. Gates v. Bridgeport Toll Bridge Co. (Wis.) 602.

2. Under a statute authorizing the construction of a new city bridge and declaring that the street railway company using the bridge shall pay a portion of the expense, the city is authorized to provide for future as well as present railway and public needs in determining the character, size, and cost of the bridge. Appeal of Norwalk (Conn.) 294.

BURDEN OF PROOF.
See EVIDENCE, 8–11.

BUSINESS CONDITIONS.
As affecting reasonableness of rates, see RATES, 11.

BUSINESS TELEPHONES.
Different rates for, as discrimination, see DISCRIMINATION, 5.
Payment for service, see PAYMENT, 5.
Right of telephone company to charge higher rates for, see RATES, 38.

CAPITAL STOCK.
See SECURITY ISSUES.

CAR OPERATORS.
Necessity of providing a conductor as well as a motorman on an interurban railway operated at a loss, see SERVICE, 27.

CARRIERS.
See also AUTOMOBILES; INTERURBAN RAILROADS; RAILROADS; STREET RAILROADS.
Nature of right of common carriage on highways, see HIGHWAYS, 1.

1. A terminal railroad having about 25 miles of main tracks and 16 miles of siding, and serving various industries by means of private sidings, and having connections with all of the trunk lines of railroads in its locality, is a common carrier entitled to a joint rate with the other railroads with which it connects. State Public Utilities Commission ex rel. Alton Bd. of Trade v. Atchison, T. & S. F. R. Co. (Ill.) 10.

CAR STEPS.
Height of, on interurban cars, see SERVICE, 28, 29.

CAR TRUST CERTIFICATES.
See SECURITY ISSUES, 7, 16.

CASH DEPOSIT.
To secure payment of service, see PAYMENT, 8–19, 21.

CENTRAL OFFICE.
Method of dividing expenses of, see APPORTIONMENT, 2.

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CERTIFICATES OF CONVENIENCE AND NECESSITY.

Grant of, to another company as proper step to correct inadequate service by existing company, see MONOPOLY AND COMPETITION, 4.

CERTIORARI.

When remand unnecessary upon reversing judgment dismissing certiorari to review order of Commission, see APPEAL AND REVIEW, 4.

1. Certiorari is the proper remedy of municipalities to obtain relief from an order of the Public Utility Commission fixing the rate to be charged the public for gas, where they claim that the rate fixed is too high; and the court should determine the question on the merits. Passaic v. Public Utility Comrs. (N. J.) 625.

2. Certiorari to set aside an order of the Public Utility Commission, made in the exercise of a discretion, fixing the rate to be charged the public for gas, is the proper remedy of municipalities which claim that the order is erroneous in fixing too high a rate. Public Service Gas Co. v. Public Utility Commission (N. J.) 251.

CHARITABLE INSTITUTIONS.

Reduced rates to, see DISCRIMINATION, 29.

CHARTER.

Construction of provision empowering municipality, to regulate vehicles, see MUNICIPALITIES, 2, 3.

CIGAR STORE.

As proper place for sale of railway tickets, see SERVICE, 25.

CITIES.

See MUNICIPALITIES.

CLASS LEGISLATION.

See CONSTITUTIONAL LAW, 2–4.

COLORADO.

Jurisdiction of Commission to entertain petition alleging violation of anti-trust laws, see COMMISSIONS, 5.

COLORED PERSONS.

Refusal of operators of jitney busses to carry, as discrimination, see DISCRIMINATION, 33.

Separate passenger coaches for, see SERVICE, 35.

COMMERCE.

1. In the absence of any specific action by Congress or the Interstate Commerce Commission, the Massachusetts Public Service Commission has at least concurrent power to remove discrimination in stock quotation service by telegraph companies, assuming that such

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COMMERCE—*continued.*
service constitutes interstate commerce. Stock Ticker Case (Mass.) 1068.

2. An order of the Georgia Commission requiring a railroad company to stop an interstate train at a small town to accommodate an average of one and one-fourth passengers per day using such train would be an improper interference with interstate commerce, where reasonable adequate passenger facilities are afforded by three trains daily of another company, and the stopping of the train would tend to prevent its meeting the competition of a parallel railroad traversing a shorter distance between the same termini. Re Atlantic Coast Line R. Co. (Ga.) 644.

3. Interstate commerce is not improperly interfered with by an order of a Public Service Commission requiring the stoppage of interstate passenger trains at a village or the rearrangement of their schedules in order that adequate local train service and facilities may be furnished. Reid v. Chicago, R. I. & P. R. Co. (Mo.) 906.

COMMISSIONS.

I. Jurisdiction, powers, and functions, 1–6.
a. In general, 1–5.
b. Over particular kinds of questions, 6.
II. Orders.

I. Jurisdiction, powers, and functions.

a. In general.

Over automobiles operating as common carrier, see AUTOMOBILES, 1–4.
discrimination in stock quotation service, see COMMERCE, 1.
rules requiring security for payment, see PAYMENT, 14.
stock ticker quotation service, see PUBLIC UTILITIES, 3.
rates, see RATES, 4–7.
security issues, see SECURITY ISSUES, 5.
service, see SERVICE, 3–9.
Validity of statute authorizing commission to determine number of tracks to be laid by a street railway company operating a line upon a city bridge, see CONSTITUTIONAL LAW, 1.
Effect of contract franchise upon right to fix rates, see CONSTITUTIONAL LAW, 5, 10.
Effect of contract between city and street railway company upon the right of the Commission to regulate bridges erected by the city upon which street cars are operated, see CONSTITUTIONAL LAW, 9.
Delegation of powers to, see CONSTITUTIONAL LAW, 12–15.
Burden of proof that railroads issuing securities without approval of Commission was without its control, see EVIDENCE, 11.
Necessity of consent of Commission to operate telephone exchange, see TELEPHONES, 1.

1. The jurisdiction of the Corporation Commission is not to be tested by the proposed order, but by the order made. Atchison, T. & S. F. R. Co. v State (Okla.) 265.

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COMMISSIONS—*continued.*

2. The Commission does not exceed its authority or jurisdiction by vacating a former order and dismissing the complaint after a hearing upon an application for a rehearing when the merits of the controversy were submitted for final decision. Mt. Konocti Light & P. Co. v. Thelen (Cal.) 291.

3. A hearing on an application for a rehearing, at a time and place fixed by the Commission, when the matter was submitted for final decision on the merits of the controversy, is sufficient to warrant the Commission to dismiss the complaint and to vacate its former order, restraining an individual from constructing a hydroelectric system to compete with the complaining company, although the Commission is without authority to change or vacate a former order without giving the adverse party an opportunity to be heard. Mt. Konocti Light & P. Co. v. Thelen (Cal.) 291.

4. The Montana Commission, in dealing with a complaint as to the service and rates of an interurban railway which was operated at a loss, stated that it would make findings in the nature of orders only as to the safety of the service and as to discrimination in rates, but its findings as to mere adequacy of service would be made in the form of suggestions. Beauleiu v. Missoula Street R. Co. (Mont.) 347.

5. The Colorado Public Utilities Commission has no jurisdiction to entertain a petition alleging violations of the laws prohibiting unfair competitions and illegal combinations in restraint of trade. Castle Rock Mountan R. & Park v. Denver Tramway Co. (Colo.) 487.

b. Over particular kinds of questions.

6. Under art. 4, § 1, and art. 6, § 1, of the Missouri Constitution, vesting the legislative power of the state in the general assembly and the judicial power in the courts, the Commission can neither repeal the Public Service Commission law forbidding discrimination in telephone rates, nor declare it unconstitutional. Knott v. Southwestern Teleg. & Teleph. Co. (Mo.) 963.

II. Orders.

As to effect of orders of Commission, see ORDERS.

COMMODITIES.

Farm products, see DISCRIMINATION, 34; SERVICE, 34.

COMMODITY RATES.

Long and short haul, see DISCRIMINATION, 6, 10.

Presumption as to reasonableness of rate voluntarily established, see EVIDENCE, 3.

COMMON CARRIERS.

See CARRIERS.

COMMUTATION RATES.

Requiring establishment of, over electrified branch to avoid discrimination, see DISCRIMINATION, 1.

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COMPARISON OF RATES.
See RATES, 12, 34.

COMPETITION.
See MONOPOLY AND COMPETITION.

COMPLAINT.
See PLEADING.

CONDITIONS.
Imposed on authorizing merger of electrical companies, see CONSOLIDATION, MERGER, AND SALE, 1, 2.

CONDUCTOR.
Necessity of providing, on interurban railway operated at a loss, see SERVICE, 27.

CONGRESS.
Jurisdiction of State Commission to remove discrimination in stock quotation service in the absence of action by Congress, see COMMERCE, 1.

CONNECTICUT.
Power of Supreme Court of Errors of, to set aside an unreasonable administrative order of the Public Utilities Commission, see APPEAL AND REVIEW, 1.
Jurisdiction of Supreme Court of Errors of, to determine the bounds of power of the superior court in reviewing an order of the Commission, see APPEAL AND REVIEW, 3.

CONNECTIONS.
See PHYSICAL CONNECTION; SERVICE CONNECTIONS.

CONSENT.
See PERMISSION.

CONSERVATION.
Oklahoma rules for conservation of natural gas, see NATURAL GAS, 1.

CONSOLIDATION, MERGER AND SALE.
Determination of return of consolidated telephone company without regard to rates paid on amount invested before consolidation, see RETURN, 10.

1. Upon the merger of an electric company which had sold electricity principally at wholesale, into another company which had previously sold electricity at retail, purchasing its supply from the first company, the latter company was authorized to issue securities for the outstanding stock of the first company and to guarantee the payment of the interest on its bonds, the companies being required to write off a sub-

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CONSOLIDATION, MERGER AND SALE—*continued.*
stantial portion of the intangible value represented by the stock of the merged company which had not been issued for cash or an equivalent in property. Re Buffalo General Electric Co. (N. Y.) 257.

2. An electric power company adequately able to absorb the duplicate facilities of a competitive company without detriment to the service or rates of either company or to itself was authorized to purchase from a power company operating in the same territory all of its plant and property including the franchises, where it appeared that the selling company was financially unable to continue properly to serve its patrons, upon condition that the price paid should not be binding for rate-making or other purposes; that the transfer of franchises should be made only after the purchasing company had filed a statement of the franchises under which it proposed to operate, to be approved by the Commission, and that the purchasing company stipulate that it does not, and will not, claim a value for the franchises so conveyed to it other than the actual amount paid by the selling company in acquiring them. Re Tulare County Power Co. (Cal.) 817.

3. Property and franchises used in a storage warehouse and general merchandise business were authorized to be sold to a corporation, which was authorized to issue stock of a par value of $30,000 in payment therefor, the sale being consistent with the public interests, and the sum of the capital to be obtained by the issue of stock being required in good faith for purposes enumerated in the Public Utilities act (Public Law 1913, chap. 129, § 35.) Re Tyler (Me.) 691.

CONSTITUTIONAL LAW.

I. Due process and equal protection, 1—4.
II. Impairment of contracts, 5—11.
III. Delegation of powers, 12—15.
IV. Police power, 16.

Ordinance restricting number of jitney busses to be operated on the street as obnoxious to constitutional provisions against monopolies, see AUTOMOBILES, 9.

Power of Commission to declare unconstitutional a statute forbidding discrimination in telephone rates, see COMMISSIONS, 6.

Statute declaring invalid evidences of indebtedness when unaccompanied by certificate showing approval by Commission as violating constitutional provision that no corporation shall issue stocks or bonds except for money paid, labor done, or property actually received, see SECURITY ISSUES, 9.

I. Due process and equal protection.

Statute declaring invalid evidences of indebtedness when unaccompanied by certificate showing approval by Commission as depriving owner of due process, see SECURITY ISSUES, 8.

1. A statute (Connecticut Special Laws of 1913, p. 1144, § 4) providing that the Public Utilities Commission is authorized to determine

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CONSTITUTIONAL LAW—*continued.*
the number of tracks, not exceeding two, to be laid by any street railway company operating a street railway upon a certain city bridge, to be constructed under the provision of the act, subject to the rights of appeal provided for in the statute (chapter 128, Conn. Public Acts of 1911) establishing the Public Utilities Commission, which makes the orders that the Commission is authorized to make depend upon a finding of public convenience, necessity, or safety, establishes a primary standard governing the action of the Commission, and is not unconstitutional as authorizing the Commission arbitrarily to determine the number of tracks. Re Connecticut Co. (Conn.) 490.

2. A municipal ordinance regulating automobiles known as jitney busses, engaged in the transportation of passengers on the public streets for a charge of 10 cents or less, is not an arbitrary classification of vehicles, because based on the fare charged; nor is it a discrimination against this species of vehicle; and such regulation is warranted by the Constitution. Ex parte Cardinal (Cal.) 282.

3. Specification of the price charged by a common carrier vehicle, as an element of its description in an ordinance prescribing its class, does not make the classification arbitrary or discriminative, unless it appears that there are other vehicles of the same class, as determined by the nature of their business, that charge prices other than those specified. Ex parte Dickey (W. Va.) 93.

4. An ordinance does not unjustly discriminate against an operator of a jitney in requiring him to procure a contract from some insurance corporation indemnifying his liability for accidents, while street car companies and the drivers of ordinary hacks and automobiles are not required to procure such insurance. Ex parte Sullivan (Tex.) 441.

II. Impairment of contracts.

5. Franchise ordinances requiring gas companies to furnish service free to cities in consideration for use of the streets do not interfere with the power of a Public Service Commission to fix proper rates therefor, since such ordinances are not contracts protected against impairment by the provisions of § 10 of the Federal Constitution. Landon v. Lawrence (Kan.) 763.

6. The Missouri Public Service Commission law forbidding discrimination in telephone rates, enacted in pursuance of the constitutional provision that the public power of the state shall never be abridged to permit corporations to conduct their business so as to infringe the equal rights of individuals or the welfare of the state, is a proper exercise of the police power, and therefore does not unconstitutionally impair the obligation of a contract executed on the sale of a telephone system guarantying free service to stockholders of the vendor. Knott v. Southwestern Teleg. & Teleph. Co. (Mo.) 963.

7. The obligation of a contract to supply buildings with water at a specified rate is not unconstitutionally impaired by a subsequent order of a Public Service Commission providing for two classes of service, one at a rate identical in amount with that named in the contract, which does not provide for any particular kind of service, and the other a

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somewhat higher rate for a different and greater service. Yeatman v. Towers (Md.) 811.

8. The obligation of a contract to supply buildings with water at a specified rate is not unconstitutionally impaired by a subsequent order of a Public Service Commission changing the rate in the exercise of the police power delegated to it by the legislature. Yeatman v. Towers (Md.) 811.

9. A city and a street railway company cannot, by private agreement, deprive the Maine Commission of the jurisdiction and powers given it by § 75, chap. 51 of the Revised Statutes, providing that bridges erected by any municipality over which any street railroad passes should be constructed and maintained in such a manner and condition as to safety as the Board of Railroad Commissioners may determine. Re Rockland (Me.) 35.

10. A condition in an original grant of location by a town, restricting the rate of fare to be charged by a street railroad company, is not valid and controlling as against the rate-making power vested in the Massachusetts Commission by the Public Service act. Re Norfolk & B. Street R. Co. (Mass.) 411.

11. The right of an individual producer of oil to extract from a common source of supply sufficient oil to supply pipe lines, refineries, and markets, which he has established and secured at great expense, and to supply contracts to furnish a certain amount of oil within a given time, is subject to the power of the legislature to provide that where the full production from a common source of supply can only be obtained by conditions constituting waste, a producer may take only such proportion of oil that may be produced from the common source, without waste, as the production of his wells bear to the total production of the common source, and to empower the Commission to make rules and regulations for the prevention of waste and the unfair or inequitable taking of oil. Ardmore Oil Producers' Asso. v. W. & F. Oil Co. (Okla.) 156.

III. Delegation of powers.

Right of legislature to delegate to municipalities the right to regulate vehicles on highways, see LEGISLATURE, 1.

Charter provision empowering municipality to regulate vehicles as delegation of legislative power, see MUNICIPALITIES, 2.

Constitutionality of statute authorizing Commission to determine whether telegraph station should be abandoned, see SERVICE, 6.

12. The power to fix rates, being purely a legislative function, its delegation should be in express terms, and not by implication, or, at least, the implication should be so undeniably manifest as to be the substantial equivalent of an expressed declaration. Re Ulster & D. R. R. Co. (N. Y.) 126.

13. The legislature has the power to grant to the Public Service Commission the right to regulate and control the operation of jitneys. Smith v. Nunnelly (W. Va.) 177.

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CONSTITUTIONAL LAW—*continued.*

14. The general assembly could constitutionally delegate to the Public Utilities Commission authority to determine the number of street railway tracks to be laid on a city bridge used as a public highway, as it involved the adjudication of a matter of an administrative character, and might properly be left for decision to a tribunal exercising administrative and executive functions. Re Connecticut Co. (Conn.) 490.

15. The police power of the state to regulate water rates may be exercised by the legislature directly, or the legislature may delegate the power to a Public Service Commission, as is effected by Md. Code, Pub. Civ. Laws, article 23, §§ 415, 456. Yeatman v. Towers (Md.) 811.

IV. Police power.

16. Regulation of water rates is an exercise of the police power of the state, of which it cannot devest itself, and does not abandon by nonuser. Yeatman v. Towers (Md.) 811.

CONSTRUCTION AND EQUIPMENT.

Sufficiency of evidence to establish costs of, see EVIDENCE, 1.

Presumption arising from absence of record of cost of construction, see EVIDENCE, 6.

Security issues for, see SECURITY. ISSUES, 16.

Reasonableness of order requiring water company to lay pipes on bed of a river, see WATER, 1.

CONSUMER.

Special rates to large consumers, see DISCRIMINATION, 25–27.

Special telephone rates to old patrons, see DISCRIMINATION, 28.

Right of utility to impose fine or penalty for violation of rule, see FINES AND PENALTIES, 1.

Establishment of credit by, to secure service, see PAYMENT, 20, 21.

Effect of fact that consumers have purchased appliances in reliance upon low rates, see RATES, 10.

Right of utility to assess cost for service installation against, see RETURN, 16.

Liability for cost of extensions outside of limits of municipality, see SERVICE, 15, 16.

Liability for cost of extensions within municipality, see SERVICE, 17.

Reasonableness of rule requiring consumers to pay cost of extending gas main to be rebated as additional consumers are connected, see SERVICE, 32.

Right of utility to require consumers to provide meter boxes at special locations, see SERVICE, 74.

Purchase of meters through the utility, see Service, 76.

Duty to comply with rules governing use of water supply, see SERVICE, 80.

CONTRACTS.

Impairment of contracts, see CONSTITUTIONAL LAW, 5–11.

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CONTRACTS—*continued.*

Presumption of authority to abrogate contract to furnish free telephone service to stockholders, see EVIDENCE, 5.

Right of a utility to require the consumer to sign a contract for service, see SERVICE, 1.

1. A franchise whereby an electric light and water company agreed to place and maintain fire plugs attached to its water main, and to erect and maintain lamps at such places as the corporate authorities should designate, constitutes a contract, and reasonable orders of the corporate authorities made in accordance with the provisions thereof should be enforced. Marlinton v. Marlinton Service Co. (W. Va.) 277.

2. A contract entered into between telephone companies upon the transfer and sale of a telephone system, whereby stockholding subscribers of the vendor are to be given certain service, is enforceable by such subscribers, provided the contract is in harmony with the law and the public policy. Knott v. Southwestern Teleg. & Teleph. Co. (Mo.) 963.

3. A contract executed upon the sale of a telephone system guarantying free service to stockholders of the vendor cannot be said to be abrogated by a subsequent contract withdrawing such privilege, since the prior contract, being unjustly discriminatory, had no legal inception. Knott v. Southwestern Teleg. & Teleph. Co. (Mo.) 963.

CONVENIENCE.

See CERTIFICATE OF CONVENIENCE AND NECESSITY.

COOKING.

Right to charge higher rate for natural gas for, see RATES, 27.

COST OF REPRODUCTION.

See REPRODUCTION COST.

COST OF SERVICE.

As element to be considered in determining reasonableness of rates, see RATES, 13, 14.

COSTS AND EXPENSES.

Duty to charge salaries of general manager and superintendent to general and miscellaneous expense, see ACCOUNTING, 6.

Apportionment of, see APPORTIONMENT, 1, 2.

Method of apportioning expenses in the case of joint enterprise, see APPORTIONMENT, 8–15.

Sufficiency of evidence to establish cost of construction, see EVIDENCE, 1.

Presumption arising from absence of records of cost of construction, see EVIDENCE, 6.

Consideration of, in fixing rates, see RATES, 13, 14.

Operating expenses, see RETURN, 13–23.

Allowance for unexpected outlays by natural gas company in determining the operating expenses, see RETURN, 15.

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COSTS AND EXPENSES—*continued.*

Initial cost of installing service connections as an operating expense, see RETURN, 16.

For disconnections and reconnections at season resorts, see SERVICE, 2.

Who must pay for extensions outside of municipalities, see SERVICE, 15, 16.

Who must pay for extensions within limits of municipality, see SERVICE, 17.

Duty of utility to make service connections at its own expense, see SERVICE, 18.

Reasonableness of rule requiring consumers to pay cost of extending gas main, to be rebated as additional consumers are connected, see SERVICE, 32.

Duty of water utility to furnish service connections at its own expense, see SERVICE, 68, 69.

COUNTY SEAT.

Power of Commission to authorize abandonment of telegraph station at, see SERVICE, 7.

Statute requiring telegraph companies to maintain station at, superseded by Public Utilities act, see SERVICE, 52.

COURTS.

Interference by, of order of Commission relating to the number of street railway tracks and the kind of rails to be used on a bridge, see APPEAL AND REVIEW, 2.

Jurisdiction of Connecticut Supreme Court of Errors to determine the bounds of power of the superior court and the extent of its duty in reviewing an order of the Commission, see APPEAL AND REVIEW, 3.

Remanding case to Commission to certify findings of fact, see APPEAL AND REVIEW, 5.

1. The question whether or not an order of the Railroad Commission is reasonable is for the court. Rowland v. Saline River R. Co. (Ark.) 191.

CREDIT.

Establishment of, to secure service, see PAYMENT, 20, 21.

Discontinuance of service for failure of consumer to establish credit, see PAYMENT, 22.

DAMAGES.

Consideration of losses due to extraordinary conditions in operation of toll bridge in fixing operating expenses, see RETURN, 20.

Consideration of, due to personal injuries in fixing operating expenses, see RETURN, 21.

DEFICITS.

Increase of telephone rates to cover, see RETURN, 3.

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DEFINITION.

Common carriers within meaning of Public Utility law, see AUTOMOBILES, 1.

Depreciation defined, see DEPRECIATION, 1.

Localities, as used in Public Service law with reference to physical connection of telephone lines, see SERVICE, 65.

DELEGATION OF POWERS.

See CONSTITUTIONAL LAW, 12–15.

DELINQUENT CONSUMER.

Effect of delinquency in payment by consumer who has made a cash deposit, see PAYMENT, 19.

Discontinuance of service for nonpayment of bills, see PAYMENT, 22–25.

Reasonableness of charge for turning on water that had been shut off because of nonpayment of bills, see RATES, 52.

DELIVERY.

Time and condition of delivery of natural gas as factors in determining rates, see RATES, 25.

DEPARTMENTS.

Necessity for proper apportionment between departments of utility in determining rate of return for one department, see RETURN, 25.

DEPOSIT.

As security for payment of bills, see PAYMENT, 8–19.

Right of consumer to return of, after prompt payment of bills for a period of one year, see PAYMENT, 21.

DEPRECIATION.

I. In general, 1–4.
II. Basis for computing, 5–7.
III. Accrued depreciation, 8, 9.
IV. Annual allowances held reasonable, 10–23.
a. Auto-livery and motor cabs, 10–12.
b. Ferries, 13.
c. Gas, 14.
d. Heating, 15.
e. Telephones, 16–20.
f. Toll bridge, 21.
g. Water, 22, 23.

I. In general.

1. Depreciation may be defined as the lessened money value caused by physical deterioration or lack of adaptation to function, and is occasioned by wear and tear due to the use in the service and age of the

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DEPRECIATION—*continued.*
instrumentality, to obsolescence due to a change or development in the art requiring new and improved apparatus, to inadequacy of supersession caused by the growth of the business so that the old instrumentality is no longer adequate for the purpose of which it was intended, and must be superseded or replaced by a larger unit, and deferred maintenance due to lack or neglect of repairs necessary to preserve the apparatus in proper condition. Re Webster Teleph. Co. (S. D.) 516.

2. In the making of a schedule or tariff of rates to be charged by a public utility, there must be an annual allowance for depreciation. Re Webster Teleph. Co. (S. D.) 516.

3. An amount expended by a street railway company out of surplus earnings for additions and improvements, and the amount of a sinking fund set aside to pay outstanding bonds, were held in effect equivalent to a depreciation reserve fund, so long as the amounts were not capitalized. Re Norfolk & B. Street R. Co. (Mass.) 411.

4. It is not necessary for a street railroad company to accumulate a depreciation reserve or surplus fund equal to the entire amount of a depreciation of $110,000 as compared with an investment of $400,000, although due provision should be made. Re Norfolk & B. Street R. Co. (Mass.) 411.

II. Basis for computing.

5. The rate of depreciation must be determined after a careful inspection of the property, and must be considered in connection with its use. Re Webster Teleph. Co. (S. D.) 516.

6. The actual amount of property in use, and not the reduced amount paid for it upon the sale of a telephone property, should be the basis for ascertaining the necessary allowance for maintenance and depreciation, and in the absence of other evidence the cost of reproduction may be taken as this basis. Re Crownover Teleph. Co. (Neb.) 571.

7. The rate of depreciation of the property of a telephone company should be computed on the wearing value, the scrap value, or the salvage value of the different units being deducted from their cost in place and the amount of the annual reserve for depreciation fixed by dividing the wearing value by the number of years representing the life of the plant. Re Webster Teleph. Co. (S. D.) 516.

III. Accrued depreciation.

Right to fair return on capital invested without deduction of accrued depreciation, see RETURN, 8, 9.

Conclusiveness on Commission of finding in another case as to depreciated reproduction cost of a waterworks property, see EVIDENCE, 2.

8. A loss from the destruction of a street car barn and rolling stock by fire and the voluntary sale of cars, over and above the accrued depreciation, should be deducted in determining the basis of a fair return. Re Blue Hill Street R. Co. (Mass.) 370.

9. In the valuation of a telephone company for rate-making pur-

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DEPRECIATION—*continued.*
poses, the value of a plant costing $23,541.72, which had been in operation a little over six months, was fixed at $22,750, the depreciation on such a plant beginning at the moment it is installed and put into operation. Re Webster Teleph. Co. (S. D.) 516.

IV. Annual allowances held reasonable.

a. Auto-livery and motor cabs.

10. The rate of depreciation for motor cabs was found to be 15.7 per cent and for office furniture and fixtures, machine-shop equipment, and miscellaneous equipment of a taxicab company, 9.5 per cent, such rates to be based on the cost of reproduction new of the property on hand at the time of the valuation and on the original cost new in the case of property acquired thereafter. Re Barnett Taxicab Co. (D. C.) 6.

11. An auto-livery and taxicab company was ordered to conform its depreciation account to a rate of 9.3 per cent on the cost of property new for office furniture and fixtures, machine shop, tire room, and miscellaneous equipment. Re Auto Livery Co. (D. C.) 1.

12. An auto-livery and taxicab company was ordered to conform its depreciation account to a rate of 19.7 per cent on the cost of property new for motor cabs. Re Auto Livery Co. (D. C.) 1.

b. Ferries.

13. An allowance of 5 per cent per annum for depreciation was held to be fair and reasonable for a small ferry. Twin Falls Commercial Club v. Great Shoshone & T. F. Water Power Co. (Idaho) 660.

c. Gas.

14. An allowance of $100 per month for the depreciation of the property of a gas company, while possibly justifiable on a "depreciated value" theory, is too large where the company claims on an investment of $61,914.24, but on the basis of investment a proper depreciation annually should be provided by a sinking fund, with interest at 6 per cent, which would result in an annuity not to exceed $486 for seven months. Re Southern Counties Gas Co. (Cal.) 197.

d. Heating.

15. In fixing the rates for hot-water heating service, an allowance of 3 per cent on the total valuation of the utility for straight line depreciation and 2 per cent on the sinking-fund basis was held reasonable where it appeared that the life of the distribution system was estimated at twenty-five years; the plant equipment estimated to be in 50 per cent condition after thirteen years' use, and the buildings estimated at 90 per cent condition. Re Peru Heating Co. (Ind.) 502.

e. Telephones.

16. In a proceeding to fix the rates of a telephone company it was

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DEPRECIATION—*continued.*
held that 5 per cent of the property value should be deducted from the gross revenue annually to provide for depreciation, where no amount had been set aside for this purpose. Re Colchester Farmers' Teleph. Co. (Ill.) 23.

17. An annual allowance of 6 per cent on the conservative reproduction value of the property of a telephone company was held necessary to cover depreciation. Re Monroe Independent Teleph. Co. (Neb.) 57.

18. An annual allowance of 6 per cent for depreciation was held adequate for a telephone plant where there was very little probability of depreciation by reason of obsolescence and inadequacy or supersession. Re Webster Teleph. Co. (S. D.) 516.

19. Upon granting permission to a telephone company to increase its rates, a company was required to set aside out of its earnings annually an amount equal to 8 per cent upon the reproduction value of its property new, such a sum to be expended for current maintenance and to take care of the depreciation of the plant. Re Valparaiso Teleph. Co. (Neb.) 578.

20. An allowance of 9 per cent of the reproduction value of a telephone company was allowed for the purpose of maintenance and depreciation, where the topography of the country and the scarcity of population made the construction of long farm lines necessary. Re Crownover Teleph. Co. (Neb.) 571.

f. Toll bridge.

21. An annual allowance of $1,050 for depreciation was made in the case of a toll-bridge property, the composite life of which was estimated at twenty-five years, and the present value of which was fixed at $23,831, and this allowance was held to be conservative when consideration was given to the fact that contingencies and losses due to extraordinary causes might occur at any time. Gates v. Bridgeport Toll Bridge Co. (Wis.) 602.

g. Water.

22. A proper annual depreciation charge for a waterworks plant was found to be 1 per cent of its present value. Re Galveston Waterworks Co. (Ind.) 27.

23. The Massachusetts Commission, in estimating the amount of revenue necessary for a street railroad company, did not apply the rule that 20 per cent of operating revenue is the proper proportion necessary to cover maintenance of way, structures, and equipment and depreciation with average conditions, but allowed a greater percentage where the road was small with relatively low gross earnings and the accrued depreciation was relatively large. Re Blue Hill Street R. Co. (Mass.) 370; Re Norfolk & B. Street R. Co. (Mass.) 411.

DEPRESSED BUSINESS CONDITIONS.

As affecting reasonableness of rates, see RATES, 11.

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DETERIORATION.

As an element of depreciation, see DEPRECIATION, 1.

DIRECTORS.

Different rates of discount in favor of, as discrimination, see DISCRIMINATION, 19.

DISCONTINUANCE OF SERVICE.

For failure to make cash deposits to secure payment, see PAYMENT, 13.

Effect of delinquency of consumer who has made a cash deposit to secure payment, see PAYMENT, 19.

To delinquent consumers, see PAYMENT, 22–25.

Reasonableness of charge for turning on water that had been shut off because of nonpayment of bills, see RATES, 52.

Who may turn on water shut off by utility, see SERVICE, 67.

Right to shut off water from consumers who habitually furnish water to nonsubscribers, see SERVICE, 77.

Necessity of notice to consumer before shutting off water supply, see SERVICE, 78.

DISCOUNT.

Inclusion of item for amortization of bond discount in statement of operating expenses, see ACCOUNTING, 4.

Different rates of, in favor of officers and employees as discrimination, see DISCRIMINATION, 19.

For prompt payment of bills for service, see PAYMENT, 6, 7.

Consideration of bond discount in valuation, see VALUATION, 21.

DISCRIMINATION.

I. Rates, 1–29.

a. In general, 1–5.

b. Long and short haul, 6–10.

c. Free service and reduced rates, 11–29.

1. In general, 11–16.

2. Municipalities, 17, 18.

3. Officers and employees, 19.

4. Stockholders, 20–23.

5. Owners of equipment, 24.

6. Large consumers, 25–27.

7. Older consumers or patrons, 28.

8. Charitable and benevolent purposes, 29.

II. Service, 30–37.

a. In general, 30–34.

b. Rules requiring security for payment for service, 35–37.

I. Rates.

a. In general.

Power of Commission to repeal or to declare unconstitutional a statute forbidding discrimination in telephone rates, see COMMISSIONS, 6.
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DISCRIMINATION—*continued.*

1. A steam railroad which, upon electrifying one of its branches, had abolished upon that branch its existing commutation rates and inaugurated a zone system of fares, the regular steam railroad fares for the traveler with baggage being retained, was ordered to establish, in addition to the ex-rating zone and other rates of fare, general and pupil commutation rates, in order to avoid discrimination as between its different branches, there being nothing in the testimony to indicate that the application of the commutation rates would unreasonably reduce the earnings of the railroad on the branch in question. McKenna v. New York, N. H. & H. R. Co. (R. I.) 269.

2. A street railway company, on being authorized to sell books of 50 tickets for $2.75, each ticket good for a 6-cent fare, was required also to sell books of 18 tickets for $1, on the ground that it was desirable that such tickets should be made available upon payment of a comparatively small sum. Re Norfolk & B. Street R. Co. (Mass.) 411.

3. A telephone company is not justified in charging toll service between a small village and an exchange located at the county seat 9 miles distant because of the fact it has moved its exchange, formerly located in that village, to another place 15 miles distant from the county seat, and because the subscribers of the latter exchange have always paid for toll service; since the situation of the subscribers of the two exchanges with reference to toll service is different. Cooper v. Williamsville-Sherman Teleph. Co. (Ill.) 19.

4. A rate of $12 per year to subscribers of a telephone company, which owned the poles supporting the service wires owned by rural subscribers, plus a charge of $1 per year to rural subscribers located at different distances from the exchange, was held discriminatory, and the company was permitted to substitute a plus charge of 5 cents per year for each pole between the exchange and the subscriber's premises. Re Chesterfield Teleph. & Teleg. Co. (Ill.) 663.

5. The Illinois Commission Conference Ruling No. 13, which provides that "the classification of telephone subscribers into business and residence subscribers, with higher rates for the former than for the latter, is reasonable and permissible," is not a ruling that it is discriminatory and unlawful to charge the same rate for business telephones as for residence telephones. Re Forest City Teleph. Co. (Ill.) 666.

b. Long and short haul.

6. The same commodity rate for a short haul as for a long haul was held discriminatory, although the mountainous character of the short-haul territory relatively increased the cost of such service, where such additional cost was less than the difference in rates that should exist between the long and the short haul. Colburn v. Florence & C. C. R. Co. (Colo.) 554.

7. A proposed increase of street car fares which will not result in excessive or unreasonable profits to the company will not be approved if the fares unjustly discriminate against short-haul passengers. Re Blue Hill Street R. Co. (Mass.) 370.

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DISCRIMINATION—*continued.*

8. A flat street car fare for a ride of any distance in a particular zone does not unjustly discriminate against short-haul passengers so long as the unit of fare is not unduly high. Re Blue Hill Street R. Co. (Mass.) 370.

9. A street railway company was authorized to obtain additional revenue by making an additional fare zone and reducing the unit fare from 6 to 5 cents in the shorter zones, rather than to increase the unit from 6 to 8 cents without making any change in the zones, on the theory that an increase in traffic would result from the new schedule, and objection that the 8 cent unit would be so high as to unjustly discriminate against short-haul passengers in a zone would be obviated. Re Blue Hill Street R. Co. (Mass.) 370.

10. Railroads operating between stations in Nebraska cannot apply to shipments from intermediate points in the state, the rates under the tariff in general order No. 19 of the Nebraska Railway Commission, which requires carriers to apply the distance schedule of rates on traffic moving between stations in the state except as provided by certain rules, when the application of the terminal rates under the long and short haul clause of the Railway Commission act will make a lower rate. Re Investigation of Rates & Charges (Neb.) 55.

c. Free service and reduced rates.

1. In general.

11. In formulating a schedule of rates for a toll bridge which was receiving an inadequate return on its investment, it was held that public stock buyers, allowed to pass free of charge, should be assessed at the regular rates, and that rural mail routes should be assessed either at single-horse vehicle rates, or team rates, unless a yearly contract basis, open to all users, is agreed upon. Gates v. Bridgeport Toll Bridge Co. (Wis.) 602.

12. Under the Maine statutes no person may be given a reduced rate for electricity merely to induce him to use the current or to prevent him from generating his own power. Re Rumford Falls Light & Water Co. (Me.) 680.

13. A telephone company will not, upon buying out a competitor, be compelled to continue free toll service inaugurated during the period of competition, since, in addition to the fact that such service necessitates a separate investment, it is unlawful, because discriminatory. Farmers' Committee v. Mountain States Teleph. & Teleg. Co. (Mont.) 52.

14. A telephone company cannot discontinue free service between one of its exchanges and the exchange of another company without permission of the Illinois Commission, where such service has been voluntarily accorded for a number of years, since § 36 of the Public Utilities Commission act provides that "no public utility shall increase any rate or other charge, or so alter any classification, contract practice, rules, or regulations as to result in any increase in any rate or other charge under any circumstances whatsoever, except upon a showing before the

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DISCRIMINATION—*continued.*

Commission and a finding by the Commission that such increase is justified;" and it is immaterial that the company discontinuing its service may, by virtue of a contract, have the right to impose a toll charge. Potomac Teleph. Co. v. Coon Bros. Teleph. Co. (Ill.) 323.

15. The giving of free service to the patrons of a telephone company until 300 subscribers have been secured is a violation of a statute providing that a telephone company may furnish service free or at reduced rates to its officers, agents, or employees in furtherance of their employment, but requiring it to charge full schedule rates without discrimination for all other services. Re Northwestern Teleph. Exch. Co. (Minn.) 344.

16. The practice of a waterworks company in furnishing free service to certain consumers was ordered discontinued as discriminatory. Re Galveston Waterworks Co. (Ind.) 27.

2. Municipalities.

Franchise ordinance requiring gas company to furnish free service to city in consideration of use of the streets as interference with the power of the Commission to fix rates, see CONSTITUTIONAL LAW, 5.

17. The furnishing of "free gas" to cities in consideration for the use of streets in compliance with terms of ordinances is a species of patent discrimination against those consumers who are required to pay scheduled prices, and it should, therefore, be promptly discontinued. Landon v. Lawrence (Kan.) 763.

18. A city operating its own water plant or electric plant should pay the utility at a reasonable rate for service rendered the city, and the utility should pay the city a reasonable amount as taxes and as interest on the city equity in the property of the utility, in order to avoid unjust discrimination in favor of either the taxpayers or the consumers. Re Light & Water Commission (Wis.) 539.

3. Officers and employees.

19. The practice of allowing directors, officers, and employees different rates of discount than are allowed other purchasers of electric current is illegal, and, where offered in favor of officers, cannot be justified on the ground that they receive no salary or other compensation. Re Farmingdale Lighting Co. (N. J.) 515.

4. Stockholders.

Statute forbidding discrimination in telephone rates as impairing obligation of contract guarantying free service to stockholders, see CONSTITUTIONAL LAW, 6.

Validity and enforceability of contract to provide free telephone service to stockholders, see CONTRACTS, 2, 3.

Presumption of authority to abrogate contract to furnish free telephone rates to stockholders, see EVIDENCE, 5.

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DISCRIMINATION—*continued.*

20. A contract entered into between telephone companies upon the transfer and sale of a telephone system, whereby stockholding subscribers of the vendor are to be given service free, and other subscribers charged therefor, provides for a discrimination not permitted by the common law or the Missouri statute forbidding unreasonable discriminations, since such a classification is not just or fair. Knott v. Southwestern Teleg. & Teleph. Co. (Mo.) 963.

21. A contract executed on the sale of a telephone system guarantying free service to stockholders of the vendor is not protected by ¶ 4, § 7, of the Missouri Public Service Commission law, which continues in force contracts existing on its effective date, since the statute applies only to valid contracts. Knott v. Southwestern Teleg. & Teleph. Co. (Mo.) 963.

22. A telephone company in partly performing a contract providing for an unjust discrimination in requiring it to render service free to stockholders of the predecessor company, by giving service without charge for a certain time, is not thereby estopped from claiming that the contract is void and unenforceable by the stockholders. Knott v. Southwestern Teleg. & Teleph. Co. (Mo.) 963.

23. The practice of furnishing electricity free of charge to stockholders and employees of the company was ordered to be discontinued as being illegal under § 1797m–89 of the Wisconsin Public Utility law. Bosshard v. Hussa Bros. Light & Water Co. (Wis.) 584.

5. Owners of equipment.

24. It is discriminatory and unlawful under the Illinois Commission Conference Ruling No. 15 to grant any reduction from the regular rate to telephone subscribers owning their own telephones; but under conditions fixed by the Commission a telephone company may rent an instrument from a subscriber who owns the same. Re Forest City Teleph. Co. (Ill.) 666.

6. Large consumers.

25. The Maine statute presupposes, upon the approval by the Commission of a contract between a public utility and a municipality for a reduced rate for street lighting, the filing of an open rate similar to that upon which the contract is based, so that other applicants for the same service of the same character may know what they are entitled to. Re Rumford Falls Light & Water Co. (Me.) 680.

26. The Maine Commission will approve a contract for reduced rates to a municipality for street lighting for a definite term so long as the price is sufficient to return some profit to the utility, and is open as long as the utility has surplus current to supply, without injury, to the general public dependent upon it; and it is immaterial that the unit required is large, or the character of its use confined to few customers. Re Rumford Falls Light & Water Co. (Me.) 680.

27. Under § 32 of chapter 12 of the Maine Public Laws of 1913 as amended by § 3 of chapter 347 of the Laws of 1915, the Commission

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DISCRIMINATION—*continued.*
has power to approve a contract between a public service corporation and a municipality to furnish electric current for street lighting at a rate less than the domestic light rate named in its schedule. Re Rumford Falls Light & Water Co. (Me.) 680.

7. Older consumers or patrons.

28. Special rental contracts by which older patrons of a telephone company are receiving rentals at different prices than are afforded later patrons are discriminatory, and, where such contracts are subject to cancellation on notice, the company should give notice, and, on the expiration of the time mentioned in the contract, should discontinue the service or enter into nondiscriminatory contracts. Farmers' Committee v. Mountain States Teleph. & Teleg. Co. (Mont.) 52.

8. Charitable and benevolent purposes.

29. A railroad company was permitted to grant reduced rates for transportation to the general public desiring to attend a public musical festival consisting largely of chorus singing, and a less rate to members of the chorus, upon the ground that the festival, with its incident instruction to the chorus and its performance before the public, is educational, and hence a "charity or benevolence" within the provisions of the utility act, permitting reduced rates. Re Maine C. R. Co. (Me.) 957.

II. Service.

a. In general.

Jurisdiction of Commission to remove discrimination in stock quotation service, see COMMERCE, 1.

30. Telegraph companies furnishing or supplying to any customer in Boston the quotations of the New York Stock Exchange by means of ticker or "stock telegraph system" must furnish or supply them without unjust and unreasonable discrimination to all customers within the district or districts supplied by their respective services who will comply with all lawful regulations connected with such service, and who desire such quotations for lawful and proper use. Stock Ticker Case (Mass.) 1068.

31. The fact that there is a large percentage of leakage and waste of natural gas due to the defective condition of an independently owned pipe line does not justify a producing company in discontinuing service in certain cities supplied from such pipe line by a distributing company, except at a flat rate for gas delivered at the gate of the pipe line, where it appears that by virtue of certain agreements such line is virtually a portion of the producing company's plant which it is bound to maintain in proper condition. Landon v. Lawrence (Kan.) 763.

32. The mere fact that a telephone company which refuses to afford physical connection between its lines and the lines of another company, through the exchange of a third company, grants such facilities to a

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DISCRIMINATION—*continued.*
fourth company, does not show that the latter company is given any undue preference thereby, in the absence of evidence that the companies are similarly situated with respect to such service. Blairsville Teleph. Co. v. Johnstown Teleph. Co. (Pa.) 933.

33. A complaint against operators of jitneys for refusing to carry negroes was dismissed without prejudice upon their having abated the discrimination. Smith v. Nunnelly (W. Va.) 177.

34. To enable the Commission to avoid discrimination in ordering, as a part of the regular freight service of a railroad, the operation of a train to meet the special requirements of shippers of perishable farm products, it should appear that such shipments would be sufficient in quantity to assure a reasonable return to the company at its regular tariff. Farmers' Transp. Asso. v. Pennsylvania R. Co. (N. J.) 242.

b. Rules requiring security for payment for service.

35. The question whether a deposit should be required of patrons of a Public Service corporation to insure the company against loss from nonpayment of bills should not be left to the discretion of the employees of the corporation; but if a deposit is required at all, it should be required of all patrons without discrimination. Re Payment for Teleph. Service (Wash.) 951.

36. A rule or regulation insuring payment for future service should reduce to a minimum the possibility of discrimination by the utility in its application. Re Water, G. E. & T. Utilities Requiring Deposits (Cal.) 717.

37. Utilities, in permitting consumers of metered service to establish a credit by making a cash deposit, have the right to make such classification as may be necessary to prevent small consumers from bearing the burdens of large consumers, but all consumers within the same class must make the same deposit. Re Water, G. E. & T. Utilities Requiring Deposits (Cal.) 717.

DISSATISFACTION.
Effect of, due to increase of rates, see RATES, 7.

DISTRIBUTION SYSTEM.
Waste of natural gas by, see NATRAL GAS, 2, 3.

DIVIDENDS.
See generally RETURN.
Right to issue securities for purpose of stock dividends, see SECURITY ISSUES, 6.
Computing dividends which should have been paid in determining actual investment, see VALUATION, 8.
Legal expenses not considered in determining propriety of, see VALUATION, 12.

DRAYS.
Nature of rights of, on highways, see HIGHWAYS, 1.

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DUE PROCESS OF LAW.
See CONSTITUTIONAL LAW, I.

DWELLING HOUSE.
Necessary for accommodation of tender of toll bridge, rental value of, to be considered as part of bridge income, see RETURN, 5.

EARNING POWER.
As controlling basis in adjusting rates, see RETURN, 12.

EARNINGS.
Apportionment of, see APPORTIONMENT, 3–5, 16.
As measure of valuation, see VALUATION, 14, 15.
See also RETURN.

EARTHQUAKE.
Security issues to rebuild warehouse destroyed by, see SECURITY ISSUES, 12.

ELECTRICITY.
Duty of municipality operating electric plant to keep separate accounts, see ACCOUNTING, 11.
Apportionment of expenses of utility operating a street railway, see APPORTIONMENT, 4.
Validity and enforceability of franchise provision to erect and maintain electric lights at places to be designated by municipal authorities, see CONTRACTS, 1.
Discrimination in rates, see DISCRIMINATION, 12, 19, 23.
Conditions imposed on authorizing merger of electric companies, see CONSOLIDATION, MERGER and SALE, 1, 2.
Admission to occupied field, see MONOPOLY AND COMPETITION.
Rates for, see RATES, 15–20.
Amount allowed for operating expenses of an electric utility, see RETURN, 18, 24, 25.
Security issues, see SECURITY ISSUES, 14, 17, 18, 20, 22, 25, 26.
Service by, see SERVICE, 24.

ELECTRIC RAILROADS.
See INTERURBAN RAILWAYS; STREET RAILWAYS.

ELECTRIC SIGN.
Rates for, see RATES, 19.

EMPLOYEES.
Different rates of discount in favor of, as discrimination, see DISCRIMINATION, 19.

EQUAL PROTECTION OF LAW.
See CONSTITUTIONAL LAW, I.

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EQUIPMENT.

Method of accounting by street railway company for equipment rented, see ACCOUNTING, 8.

License fee paid for, as an operating expense, see RETURN, 17.

Valuation of equipment not owned by utility, see VALUATION, 38.

See also CONSTRUCTION AND EQUIPMENT.

ESTOPPEL.

By part performance of contract to render free service, see DISCRIMINATION, 22.

EVIDENCE.

I. In general, 1, 2.

II. Presumptions, 3–7.

III. Burden of proof, 8–11.

I. In general.

1. The cost of constructing a plant cannot be established by the debits to an account in a bank through which all construction expenditures were checked, where the account was not used for construction purposes only and the checks do not disclose what the payments were for. Mathews v. Viola Light & P. Co. (Wis.) 360.

2. The Commission is not bound in a rate case by the depreciated reproduction cost of a waterworks property found by its engineers in another case and accepted by the company, but such value may be taken as sufficiently conclusive to that fact. Re San Jose Water Co. (Cal.) 706.

II. Presumptions.

3. It will be assumed that a commodity rate voluntarily established is not so low as to deprive the carrier of a fair return, in a proceeding attacking, as discriminatory, the same charge for transporting the commodity a shorter distance, so that the Commission, in finding the rate is discriminatory, will order a reduction for the short haul rather than an increase for the long haul. Colburn v. Florence & C. C. R. Co. (Colo.) 554.

4. Rates influenced by competitive conditions do not come under the provision of the statute that "the lowest rate published or charged by any railway company for substantially the same kind of service, whether in this or another state, shall, when introduced in evidence, be accepted as prima facie evidence of a reasonable rate for the service under investigation." Nebraska Portland Cement Co. v. Chicago, B. & Q. R. Co. (Neb.) 64.

5. It will be presumed that a telephone company which entered into a contract upon the sale of its system, whereby its stockholders are to be given free service, has authority to execute a subsequent contract abrogating such privilege, in the absence of a showing that it had no such authority. Knott v. Southwestern Teleg. & Teleph. Co. (Mo.) 963.

6. Doubts as to the cost of constructing a street railroad arising

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EVIDENCE—*continued.*
from the absence of records of the cost which the company ought to keep and preserve, the vouchers having been destroyed by fire, must be resolved against the company in investigating its capital expenditures for rate-making purposes. Re Blue Hill Street R. Co. (Mass.) 370.

7. The approval by the Massachusetts Commission, of stocks and bonds issued by a street railway company under statutes making it necessary for the Commission to find that the issues were reasonably necessary for lawful corporate purposes before it could give its approval, was regarded as conclusive evidence, so far as the Commission was concerned in fixing rates of fare, that the securities represented legitimate investment, not excessive for the purpose, and as strong presumptive evidence that the investment was "prudently" made within the meaning of the rule that capital honestly and prudently invested must be taken as the controlling factor in fixing the basis for computing rates. Re Blue Hill Street R. Co. (Mass.) 370.

III. Burden of proof.

Allegations in complaint seeking increase in rates considered as denied by burden resting on applicant of proving reasonable necessity therefor, see PLEADING, 1.

8. The burden is upon a utility to show the unreasonableness and inadequacy of existing rates, in applying for authority to make an increase. Re Macon R. & Light Co. (Ga.) 648.

9. The burden is upon a water company to prove that a request for an extension of service, made in accordance with the provision of the company's franchise, is unjust and unreasonable, and it will be granted where there is nothing in the evidence to show that the rates to be received for such extension service are not fair and adequate, and the presumption is clear that, if the extension is made, additional business would be secured by the defendant company. Marlinton v. Marlinton Service Co. (W. Va.) 277.

10. Proof that a prosperous city had already apportioned all revenues derived from its tax levy, unsupported by any evidence of its inability to meet its legitimate bills from other sources, was held insufficient to show that an increase in the rates of water supplied to it by a water company should not be permitted upon the ground that it was beyond the reasonable ability of the city to pay therefor. Re San Jose Water Co. (Cal.) 706.

11. Under a statute providing that the Railroad Commission may decide that it will not assume control of suburban railways less than 10 miles in length, one claiming that a railway company that issued securities without the approval of the Railroad Commission was exempt from the control of the Commission has the burden of showing that the Commission had decided that the railway was a suburban railway less than 10 miles in length, and that it had decided not to assume control of such railway. Davis v. Watertown Nat. Bank (Tex.) 531.

EXCESSIVE PAYMENT.

Consideration of excessive payment by utility for current in passing upon proposed increase of rates, see RATES, 15.

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EXCHANGE SERVICE.

Toll and exchange telephone service to be kept in separate accounts, see ACCOUNTING, 9.

EXPENSES.

See COSTS AND EXPENSES.

EXPERIENCE.

Validity of ordinance requiring operator of jitney bus to have experience in operating automobiles in the city, see AUTOMOBILES, 7.

EXTENSION OF SERVICE.

See generally, SERVICE, 14–21.

Practicability of general rules governing the extension of water mains in new localities, see SERVICE, 9.

Reasonableness of rule requiring consumers to pay cost of extending gas mains to be rebated as additional consumers are connected, see SERVICE, 32.

Extension of street railway lines deferred because of business depression and diminished revenues, see SERVICE, 43.

FACILITY LICENSES.

Issuance of, by telephone company, see LICENSES.

FACTORY ILLUMINATION.

Rates for, see RATES, 19.

FARM TELEPHONE LINES.

Right to parallel lines of company organized on commercial basis, see MONOPOLY AND COMPETITION, 6.

Payment for service by, see PAYMENT, 5.

Service by, see SERVICE, 54, 55.

FERRIES.

Amount allowed for depreciation, see DEPRECIATION, 13.

Factors to be considered in determining reasonableness of rates, see RATES, 9.

Comparison of rates, see RATES, 12.

Amount of return, see RETURN, 26, 27.

FINDINGS.

Remanding case to Commission to certify findings of fact, see APPEAL AND REVIEW, 5.

FINES AND PENALTIES.

1. Water utilities in Montana have no authority to impose a fine or penalty on a patron for violation of rules. Public Service Commission v. Water Utilities (Mont.) 866.

2. The Oklahoma Commission imposed a fine of $500 with costs upon a railroad company which had violated an order of the Commis-

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FINES AND PENALTIES—*continued.*
sion to operate certain passenger trains necessary for the reasonable convenience of the public, upon the ground that the fact that such trains might be operated at a loss was not sufficient to render the order unreasonable. Newland v. St. Louis & S. F. R. Co. (Okla.) 89.

FIRE.
Method of accounting where portion of property has been destroyed by, see ACCOUNTING, 5.

FIRE CROSSINGS.
Stopping of street cars at, see SERVICE, 47.

FIRE PROTECTION.
Validity and enforceability of franchise provision to place and maintain fire plugs at such places as the municipal authorities should designate, see CONTRACTS, 1.
Rates for, see RATES, 49, 50.
Power of municipal authorities to compel utility to extend its service to provide fire hydrants within the territory covered by its charter, see SERVICE, 19.
Duty of water company to furnish sufficient pressure for, see SERVICE, 82, 83.

FLAT RATES.
Meter rate for steam heating preferable to, see RATES, 31.
For water, see RATES, 45–48.

FLOATING INDEBTEDNESS.
Consideration of, in fixing rates, see RATES, 8.
Security issues for payment of, see SECURITY ISSUES, 10, 14.

FORM.
Of accounting, see ACCOUNTING.

FRANCHISE CONTRACT.
Effect of fact that the Commission has power to regulate the service of a street railway company upon its right to ignore its franchise obligations, see SERVICE, 42.

FRANCHISES.
Effect of franchise contract upon the right of the Commission to regulate rates, see CONSTITUTIONAL LAW, 10.
Validity and enforceability of provision to place and maintain fire plugs and electric lights at places to be designated by municipal authorities, see CONTRACTS, 1.
Validity of stipulation in municipal franchise limiting the price to be charged for gas, see RATES, 1.
Power of Commission to regulate rates of utility that has surrendered its franchise, see RATES, 4.

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FRANCHISES—*continued.*
Effect of franchise fixing rates upon establishment of minimum charge for gas, see RATES, 21.
Consideration of, in valuation, see VALUATION, 43–46.

FREE AND REDUCED RATES.
See DISCRIMINATION, 11–29.

FUEL.
Rates for natural gas for, see RATES, 25.

FUNCTIONS.
Of Commissions, see COMMISSIONS, I.

FURNITURE.
Depreciation of, see DEPRECIATION, 7.

FUTURE NEEDS.
Right of city to make provisions for, in determining character, size, and cost of bridge which a street railway company, using the bridge, is obliged to contribute, see BRIDGES, 2.

GAS.
See also NATURAL GAS.
Method of apportioning values in gas and transmission lines, see APPORTIONMENT, 7.
Certiorari as proper remedy of municipalities to obtain relief from an order of the Commission fixing the rate to be charged public for gas, see CERTIORARI, 1, 2.
Effect of franchise ordinance requiring free service to cities upon power of Commission to fix rates, see CONSTITUTIONAL LAW, 5.
Amount allowed for depreciation of plant, see DEPRECIATION, 14.
Validity of stipulation in municipal franchise limiting the price to be charged for, see RATES, 1.
Rates for, see RATES, 21.
Reasonableness of rule requiring new consumers to pay cost of extending gas main, see SERVICE, 32.
Valuation of plant, see VALUATION, 24, 41, 45, 46.

GAS ENGINE.
Right to charge higher rates for gas used in, see RATES, 26.

GENERAL EXPENSES.
Duty of street railway company to charge salaries of general manager and superintendent to, in accounting, see ACCOUNTING, 6.

GENERAL MANAGER.
Salary of, to be charged to general miscellaneous expense, see ACCOUNTING, 6.
Amount paid to, as adjustment of back salary as operating expense, see RETURN, 19.

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GOING VALUE.

Consideration of, in valuation, see VALUATION, 5, 39–42.

GROUNDED TELEPHONE SYSTEM.

Consideration to be given to proposed change from grounded to metallic circuit, see VALUATION, 11.

HEARING.

Sufficiency of hearing on rehearing before Commission, see COMMISSIONS, 3.

HEATING.

Amount allowed for depreciation of hot water heating plant, see DEPRECIATION, 15.

Right to charge higher rates for natural gas for cooking and lighting than for, see RATES, 27.

Rates for steam heating, see RATES, 31.

Valuation of hot water heating plant, see VALUATION, 42.

HIGHWAYS.

Right of legislature to regulate common carrying vehicles on highways, or to delegate such power of regulation to municipalities, see LEGISLATURE, 1.

1. All rights of common carriage on highways, such as those conducted by means of drays, omnibuses, hackney coaches, and taxicabs, are legislative grants or concessions, much lower in legal quality and dignity than the rights of ordinary use to which highways are incidentally subjected by citizens in travel and the prosecution of their business. Ex parte Dickey (W. Va.) 93.

2. Legislative recognition of the right of owners of vehicles to use highways for the purpose of common carriage as one common to all citizens by grant of authority to municipal corporations to license and tax persons engaged in the exercise thereof, in the manner in which they are authorized to license and tax ordinary vocations, is an implied grant of such common right. Ex parte Dickey (W. Va.) 93.

3. The legislature may so limit, qualify, and regulate the right of owners of vehicles to use highways for the purpose of common carriage as to make the exercise thereof subserve the interest and convenience of the public, as in the case of ferries, street railways, telegraphs, and telephones. Ex parte Dickey (W. Va.) 93.

HOT WATER HEATING.

See HEATING.

HOURS OF SERVICE.

Reasonableness of ordinance regulating number of hours for operation of jitney busses, see AUTOMOBILES, 5.

IDAHO.

Rule of Commission requiring complaint to be verified, see PLEADINGS, 3.

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ILLINOIS.

Right of telephone company to discontinue free service without permission of Commission, see DISCRIMINATION, 14.

Policy of Commission of, to grant certificate of convenience to other companies to correct inadequate service by existing companies, see MONOPOLY AND COMPETITION, 4.

IMPAIRMENT OF CONTRACTS.

See CONSTITUTIONAL LAW, 5–11.

IMPROVEMENTS.

See BETTERMENTS.

INCOME.

See RETURN.

INDEBTEDNESS.

Issuing securities for payment of floating indebtedness, see SECURITY ISSUES, 10.

Consideration of, in valuation, see VALUATION, 10.

INDEMNITY INSURANCE.

Validity of regulation requiring operator of jitney bus to furnish, see AUTOMOBILES, 13–17.

INDIVIDUALS.

Supplying water to limited number of buildings, as public utility, see PUBLIC UTILITIES, 4.

Power of Commission to fix rates of an individual supplying water, see RATES, 6.

INDORSERS.

Liability of indorsers of notes issued without approval of the Railroad Commission, see SECURITY ISSUES, 3.

INJUNCTION.

Against diverting water when it interferes with supply necessary for needs of municipality and its inhabitants, see SERVICE, 81.

1. Injunction is the proper remedy to curb an abuse of power by the Railroad Commission in issuing an arbitrary and unreasonable order compelling the operation of trains. Rowland v. Saline River R. Co. (Ark.) 191.

INSTALMENTS.

Right of utility to purchase meters from consumers on instalment plan, see SERVICE, 75.

INSURANCE.

Validity of regulation requiring operator of jitney bus to furnish indemnity insurance, see AUTOMOBILES, 13–17.

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INSURANCE—*continued.*

Moneys received from, on burning of street car barn and rolling stock, treatment of in return, see RETURN, 6.

Amount received from, used in reconstructing roadbed and track of street railway company as chargeable against operation, see RETURN, 13.

Cost of, as proper charge to operating expense, see RETURN, 23.

Effect of insurance against extrahazardous operation of ferries on rate of return, see RETURN, 27.

Allowance on valuation on one half amount paid for, see VALUATION, 31.

INTERCORPORATE RELATIONS.

Method of accounting for supplies sold and equipment rented to other companies, see ACCOUNTING, 8.

1. An arrangement between connecting street railway companies whereby one furnishes operating officials for the other should be on a definite cash basis, and expressed in a written contract, which should be filed with the Commission. Re Norfolk & B. Street R. Co. (Mass.) 411.

INTEREST.

Duty of utility to pay interest on deposits made to secure payment of bills, see PAYMENT, 16–18.

INTERSTATE COMMERCE.

See COMMERCE.

INTERSTATE COMMERCE COMMISSION.

Jurisdiction of state Commission to remove discrimination in stock quotation service by telegraph companies in the absence of action by, see COMMERCE, 1.

INTERSTATE TRAINS.

Stopping of interstate trains at a small village to accommodate passengers as interference with interstate commerce, see COMMERCE, 2, 3.

Stopping of, when passenger service is inadequate, see SERVICE, 36, 37.

INTERURBAN RAILWAY.

Orders of Commission as to safety and adequacy of service of railway operated at a loss, see COMMISSIONS, 4.

Service by, generally, see SERVICE, 25–32.

Validity of municipal ordinance requiring stops at all corners, see SERVICE, 3.

Duty to protect and carry passengers safely although road is operated at a loss, see SERVICE, 10.

INVESTMENT.

See RETURN.

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JITNEYS.

See generally AUTOMOBILES.

As to constitutionality of ordinances regulating, see CONSTITUTIONAL LAW, 2–4.

JOINT ENTERPRISE.

Method of apportioning expenses, see APPORTIONMENT, 8–15.

JOINT MANAGEMENT.

Apportionment of expenses in case of, see APPORTIONMENT, 3, 4, 5.

JOINT RATES.

Right of terminal railroad to have joint rates with connecting railroads, see CARRIERS, 1.

JURISDICTION.

Of Commissions, see COMMISSIONS, I.

LAMPS.

Mode of classifying for rate purposes, see RATES, 18.

LAND.

Test for determining value of, on which plant is located in valuation proceedings, see VALUATION, 28.

LARGE CONSUMER.

Reduced rates to, see DISCRIMINATION, 25–27.

LEAKAGE.

Of natural gas through distributing system, see NATURAL GAS, 2, 3.

LEGISLATURE.

Delegation of powers to Commission, see CONSTITUTIONAL LAW, 12–15.

Right to regulate the right of owners of vehicles to use highways for purposes of common carriage, see HIGHWAYS, 3.

1. The legislature in subserving the operation of common carrying vehicles on the highways to the interest and convenience of the public may prescribe the number, character, routes, rates, and hours of service of the vehicles or delegate such power of regulation to municipal corporations. Ex parte Dickey (W. Va.) 93.

LICENSES.

For operation of automobile as jitney bus, see AUTOMOBILES, 8–12.

License fee paid by telephone company for its equipment as an operating expense, see RETURN, 17.

Allowance on valuation of one half of amount paid for, see VALUATION, 32.

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LICENSES—*continued.*

1. The receivers of a telephone company were authorized to grant "facility licenses" to other utilities to attach and maintain their wires and fixtures on the poles and other property of the company, not needed for its own business, provided that such licenses be for a term not to exceed five years, for adequate consideration, and upon terms not in conflict with the rules and regulations of the Commission, or with any of the provisions of the Public Utilities law; and provided, further, that such licenses be terminable upon thirty days' notice or at any time upon objections by the Commission, and that two copies of such licenses be filed with the Commission within twenty days from their execution. Re Central Union Teleph. Co. (Ill.) 315.

LIGHTS.

Right to charge higher rates for natural gas for, see RATES, 27.

Power of municipal authorities to compel utilities to locate lights within the territory covered by its charter, see SERVICE, 19.

LOCALITIES.

Definition of, as used in Public Service law with reference to physical connection of telephones, see SERVICE, 65.

LONG AND SHORT HAUL.

Discrimination in, see DISCRIMINATION, 6–10.

Reduction of rate for the short haul rather than increase for the long haul where the latter rate was voluntarily established, see EVIDENCE, 3.

LONG DISTANCE MESSAGES.

Deposit as security for payment for, see PAYMENT, 11.

LOSSES.

Fine for violation of order to operate passenger train although at a loss, when considered necessary for public convenience, see FINE AND PENALTIES, 2.

In one department of utility not to be made up by excessive charges in another, see RATES, § 3.

Due to extraordinary conditions in the operation of toll bridge as operating expense, see RETURN, 20.

Amortization of, see RETURN, 24.

Duty of railway to protect and carry passengers safely although operating at a loss, see SERVICE, 10.

Duty to operate railroad at a loss, see SERVICE, 12, 33.

Right to abandon telegraph station operated at a loss, see SERVICE, 22.

Right of street railway company to abandon a particular line operated at a loss, see SERVICE, 23.

Necessity of providing conductor as well as motorman on an interurban railway operated at a loss, see SERVICE, 27.

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MACHINE SHOP.

Accounting by a water company operating its plant in connection with, see ACCOUNTING, 10.

MAIL.

Rates charged rural mail routes over toll bridge, see DISCRIMINATION, 11.

MAINE.

Authority to give reduced rates under statute of, see DISCRIMINATION, 12.

MAINS AND PIPES.

See also SERVICE CONNECTIONS.

Consideration of fact that municipality owns water mains in fixing rates to be charged by water company, see RATES, 41.

Consumer of water to pay for piping, when, see SERVICE, 74.

Reasonableness of order of municipal authorities requiring water company to lay pipes on bed of a river, see WATER, 1.

MAINTENANCE.

Right of street railway company to charge salary of general manager and superintendent to, see ACCOUNTING, 6.

Maintenance as an element of depreciation, see DEPRECIATION, 1.

MANAGER.

Salary of general manager of street railway company to be charged to general and miscellaneous expense, see ACCOUNTING, 6.

Amount paid to, as adjustment of back salary as operating expense, see RETURN, 19.

MANDAMUS.

As proper remedy to compel operation of railroad, see SERVICE, 11.

MATERIALS AND SUPPLIES.

Right to have included in allowance of working capital, in valuation proceedings, see VALUATION, 29, 30.

MERGER.

See CONSOLIDATION, MERGER, AND SALE.

METALLIC CIRCUIT SYSTEM.

Consideration to be given to proposed change from grounded to metallic circuit in valuation, see VALUATION, 11.

METER RATES.

For steam heat preferable to flat rate, see RATES, 31.

For water, see RATES, 45–48.

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METER RENTAL.

Discontinuance of, and establishment of minimum charge to cover consumer's cost, see RATES, 17, 44.

METERS.

Ownership of water meters, see SERVICE, 71–76.

METHODS.

Of accounting, see ACCOUNTING.

Of computing waste of natural gas by distributing company, see NATURAL GAS, 3.

MILEAGE BOOKS.

Sale of ticket books by street railway, see DISCRIMINATION, 2.

Power of Commission to permit charges for, exceeding maximum statutory limit, see RATES, 5.

MINIMUM CHARGE.

Substitution of, for meter rental, see RATES, 17, 44.

Effect of franchise fixing rates upon establishment of minimum charge, see RATES, 21.

For natural gas, see RATES, 28, 29.

For water, see RATES, 43, 44.

MISCELLANEOUS EQUIPMENT.

Duty of entering automobiles owned by street railway company under, in its return, see ACCOUNTING, 6.

MISSOURI.

Constitutional power of Commission in, see COMMISSIONS, 6.

Public Service Commission law of, forbidding discrimination in telephone rates as impairing obligation of contract guarantying free service to stockholders, see CONSTITUTIONAL LAW, 6.

MONOPOLY AND COMPETITION.

I. In general, 1, 2.

II. Admission of competition where field is already occupied, 3–8.

I. In general.

Ordinance restricting the number of persons operating automobiles as jitney busses as obnoxious to constitutional and statutory provisions against monopolies, see AUTOMOBILES, 9.

Jurisdiction of Commission over violation of the anti-trust laws, see COMMISSIONS, 5.

Right of telephone company to reduce rates to meet competition, see RATES, 37.

1. An order of the Commission requiring the discontinuance of telephone service on a competing line is not complied with by mere

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discontinuance of the service by the company acting as an entity distinct from the patrons of the line who continue to use it as a neighborhood convenience; but such service must be wholly discontinued both for the company and the patrons. Re Grange Hall Farmers' Teleph. Co. (Wis.) 594.

2. Upon petition of citizens of a city in which duplicate and competing telephone service was maintained by two companies, the Nebraska Commission authorized a consolidation, by the purchase of the property of one of the companies by the other, notwithstanding the purchasing company was bound by agreement with the Federal authorities under the United States anti-trust law, not to purchase the property of any competing telephone company, it appearing that the interstate service affected would be negligible, that the consolidation would be in the interest of the public welfare, and that the purchasing company had sold approximately 20,000 subscriber stations to competitors as against approximately 60,000 acquired. Scoutt v. Nebraska Teleph. Co. (Neb.) 564.

II. Admission of competition where field is already occupied.

3. The provision of a statute (Cal. Public Utility act, § 50a) "that if a public utility, in constructing or extending its line, plant, or system, shall interfere or be about to interfere with the operation of the line, plant, or system" of an established public utility, the Commission on complaint may make such order for the location of the systems affected as may be just, refers solely to an interference with the physical operation of the system of the public utility already constructed, and cannot be invoked by one utility to prevent another from extending its lines so as to be in a position to compete with it. Mt. Konocti Light & P. Co. v. Thelen (Cal.) 291.

4. The proper remedy to secure adequate service in a territory occupied by a public service corporation is not the granting of a certificate of convenience and necessity authorizing another company to enter the field, where no steps have been taken to invoke the power of the Commission for the correction of such inadequate service, since this would result in a duplication of facilities, a divided service, and its attending evils; but in such a case the Illinois Commission will order the company already in the field to furnish proper service, and will withhold its decision on the application for the certificate for the purpose of making such further order as developments may warrant. Wayne County Mut. Teleph. Co. v. Commercial Teleph. & Teleg. Co. (Ill.) 673.

5. An electric company not able to construct a sufficiently large installation to furnish power required in its territory will not be protected against the entrance into the field, of another company able to supply such service. Re Great Western Power Co. (Cal.) 843.

6. A farmer's telephone company should not be allowed to parallel the lines of a company organized on a commercial basis on the theory that the latter company charges an annual rate of $12 per year, and that the farmer's company can furnish service for $3 per year, since

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MONOPOLY AND COMPETITION—*continued.*
the latter charge covers only the central office expense and makes no allowance for interest on the capital invested, for accumulating a reserve to replace the property at the end of its useful life, for the cost of material and supplies used in keeping up the line and instruments, for the renewal of batteries, or for taxes. Re Grange Hall Farmers' Teleph. Co. (Wis.) 594.

7. A telephone company already in the field, apparently capable of furnishing good service, and supposedly put there in response to a demand, either direct or indirect, for such a grade of service, is entitled to protection against the competition of a line built as an experiment to give a cheaper grade of service at lower rates, although the prospective patrons will be satisfied with the poorer service. Re Grange Hall Farmers' Teleph. Co. (Wis.) 594.

8. In determining the cost of service to be furnished by a telephone company proposing to enter a field already occupied, consideration must be given to the cost of labor for repairing lines and instruments and for administering the business; and it is immaterial that patrons of the competing lines can afford to donate a certain amount of labor for maintenance, since this is something which cannot be considered after a company has been induced to enter a territory and is there established. Re Grange Hall Farmers' Teleph. Co. (Wis.) 594.

MONTANA.

Right of water utilities in, to impose a fine or penalty on patrons for violation of rule, see FINES AND PENALTIES, 1.

MORTGAGES.

See SECURITY ISSUES.

MOTOR-CABS.

See AUTOMOBILES.

MOTOR GENERATOR SET.

Rates for electricity for electric sign and factory illumination furnished through medium of, see RATES, 19.

MUNICIPALITIES.

Duty of keeping accounts of municipal utility separate from those of the municipality, see ACCOUNTING, 11.

Apportionment of cost of bridge between municipality and street railway using bridge, see APPORTIONMENT, 8–14.

Exclusive regulation of automobiles operated as jitney busses, see AUTOMOBILES, 4.

Right to provide for future needs in determining the character, size, and cost of a bridge which a street railway company, using the bridge, is obliged to contribute, see BRIDGES, 2.

Certiorari as proper remedy of municipalities to obtain relief from an order fixing rates, see CERTIORARI, 1, 2.

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MUNICIPALITIES—*continued.*

Franchise ordinance requiring free service to city as interference with power of Commission to fix rates, see CONSTITUTIONAL LAW, 5.

Effect of contract between city and street railway company upon the right of Commission to regulate bridges upon which street cars are operated, see CONSTITUTIONAL LAW, 9.

Effect of restriction in rates in franchise upon the right of the Commission to regulate rates, see CONSTITUTIONAL LAW, 10.

Free service to, see DISCRIMINATION, 17, 18.

Reduced rates to, for street lighting, see DISCRIMINATION, 25–27.

Burden of proof of inability to pay increased water rates, see EVIDENCE, 10.

Validity and enforceability of franchise provision to place and maintain fire plugs and electric lights at places to be designated by municipal authorities, see CONTRACTS, 1.

Power of the legislature to delegate to, the right to regulate common carrying vehicles on highways, see LEGISLATURE, 1.

As to municipal ordinances, see ORDINANCES.

Validity of stipulation in franchise limiting the price to be charged for gas, see RATES, 1.

Power of municipal authorities to compel utility to extend its service to provide lights and fire hydrants, see SERVICE, 19.

1. A municipal corporation having full legislative power to limit and regulate the use of vehicles kept for hire may classify them, for purposes of regulation; and an ordinance dealing fully with one class of such vehicles, as determined by the nature of their business and the prices they charge, is not discriminative because of its lack of provision for the regulation of other distinct classes of vehicles kept for hire. Ex parte Dickey (W. Va.) 93.

2. A charter provision empowering a municipal corporation to grant, refuse, or revoke licenses to the owners of vehicles kept for hire therein, and to subject them to such regulations as the interest and convenience of the inhabitants thereof, in the opinion of the municipal authorities, may require, delegates to the corporation full legislative power over such vehicles. Ex parte Dickey (W. Va.) 93.

3. Under a charter provision empowering a municipal corporation to grant, refuse, or revoke licenses to the owners of vehicles kept for hire therein, and to subject them to such regulations as the interest and convenience of the inhabitants thereof in the opinion of the municipal authorities, may require, the corporation has power to prescribe the routes and hours of service of motor vehicles commonly called "jitney busses," carrying passengers along the streets and taking in and discharging them in a manner similar to that in which they are received and discharged by street cars, and to require from them indemnity against injury to persons and property occasioned by the operation thereof. Ex parte Dickey (W. Va.) 93.

MUNICIPAL PLANT.

Accounting by, see ACCOUNTING, 7, 11.

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MUNICIPAL PLANT—*continued.*
Free service rendered to city, see DISCRIMINATION, 18.
Improvements to municipal lighting plant ordered, see SERVICE, 24.
Exemption of municipal water company from provision of statute requiring utilities to provide their own meters, see SERVICE, 71.

MUSICAL FESTIVAL.
As a charity or benevolence within the utility act permitting reduced rates, see DISCRIMINATION, 29.

NATURAL GAS.
Basis of apportionment of taxes assessed against the property of plant supplying several communities, see APPORTIONMENT, 2.
Refusal of company to serve except at flat rate service as discrimination, see DISCRIMINATION, 31.
Rates for, see RATES, 22–29.
Investment in plant of, to be provided for from the earnings of the property and from its salvage value at the end of a six year period, see RETURN, 11.

1. Rules relative to the conservation of natural gas were adopted by the Oklahoma Commission, and made effective on and after September 1, 1915. Re Conservation of Natural Gas (Okla.) 994.

2. In fixing the amount to be allowed to cover leakage and waste of natural gas through a distributing system, 30 per cent of the gas delivered was allowed in case of distributing companies marketing annually 10,000 cubic feet of gas or less; 25 per cent in case of companies marketing annually more than 10,000 cubic feet, and not exceeding 20,000 cubic feet, and 20 per cent in case of companies marketing annually more than 20,000 cubic feet, such percentages being an average annual allowance requiring an annual adjustment. Landon v. Lawrence (Kan.) 763.

3. Losses due to leakage and waste through a natural gas distributing system should be computed according to a formula based upon the length and carrying capacity of the pipes used in the system, and reduced to some common basis rather than by the percentage method, but the latter method may be employed in the absence of more reliable data. Landon v. Lawrence (Kan.) 763.

NEGROES.
Refusal of operators of jitney busses to carry negroes as discrimination, see DISCRIMINATION, 33.
Separate passenger coaches for, see SERVICE, 35.

NEW CUSTOMERS.
See CONSUMERS.

NIGHT.
Duty of maintaining night station agent in village of 300 inhabitants, see SERVICE, 38.

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NONSUBSCRIBERS.

Discontinuance of water service where consumer habitually furnishes water to, see SERVICE, 77.

NONUSER.

Abandonment of right to regulate water rates by, see CONSTITUTIONAL LAW, 16.

NOTES.

See SECURITY ISSUES.

NOTICE.

Necessity of, before discontinuing service for failure to pay bills, see PAYMENT, 22, 25.

Necessity of notice to consumer before shutting off water supply, see SERVICE, 78.

OBSOLESCENCE.

As an element of depreciation, see DEPRECIATION, 1.

OCCUPATION TAX.

License fee for operation of automobiles as jitney busses, see AUTOMOBILES, 8, 11.

OCCUPIED TERRITORY.

Admission of competition to, see MONOPOLY AND COMPETITION, 3–8.

OFFICE EXPENSES.

Station basis as method of division of central office telephone expenses, see APPORTIONMENT, 1.

OFFICERS.

Different rates of discount to, as discrimination, see DISCRIMINATION, 19.

Allowance for value of services rendered by an officer for which no salary was paid in estimating the value of the property, see VALUATION, 40.

OIL.

Restricting to proportionate shares amount which producer may take from common source, see CONSTITUTIONAL LAW, 11.

1. An individual producer in an oil field where the source of supply is common to all has no absolute property in the oil beneath the surface until it is raised and reduced to possession and capable of being removed or transported at the will of the owner. Ardmore Oil Producers' Asso. v. W. & F. Oil Co. (Okla.) 156.

2. The Oklahoma Commission established rules and regulations restricting the production of oil from a common source of supply on the theory that it should be produced and preserved in such a manner as not to be wasted, so that the public, the users and consumers, might

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OIL—*continued.*
receive the full benefit therefrom, rather than in such quantities in excess of market demands, as would result in the early destruction of the oil field, although reducing the price of the oil. Ardmore Oil Producers' Asso. v. W. & F. Oil Co. (Okla.) 156.

3. Producers of oil in Oklahoma from a common source of supply, who do not produce their percentage of the possible capacity of their wells that is necessary to make up the daily market demand, cannot prevent other producers from supplying such demand. Ardmore Oil Producers' Asso. v. W. & F. Oil Co. (Okla.) 156.

4. Producers of oil in Oklahoma from a common source of supply are prohibited from taking more oil than is necessary to supply the daily market demand, the taking to be regulated by ascertaining such demand and the potential production, and by permitting each operator to produce only such a per cent of the possible production of each well as is necessary to make up upon the whole the daily market demand, the daily production to be the average of a period of thirty days. Ardmore Oil Producers' Asso. v. W. & F. Oil Co. (Okla.) 156.

OKLAHOMA.

Rules of Commission for conservation of natural gas, see NATURAL GAS, 1.

Rules of Commission restricting the production of oil from a common source of supply, see OIL, 2.

OLD PATRONS.

Special telephone rates to, see DISCRIMINATION, 28.

OPERATING EXPENSES.

Exclusion of amortization of bond discount in statement of, see ACCOUNTING, 4.

Consideration of, in fixing rates, see RATES, 13, 14.

Allowance of, in return, see RETURN, 13–23.

OPERATION AT A LOSS.

See LOSS.

OPERATOR.

Validity of municipal ordinance requiring operators of jitney bus to have experience in operation of automobiles in the city, see AUTOMOBILES, 7.

ORDERS.

Power of the Connecticut Supreme Court of Errors to set aside an unreasonable administrative order of the Public Utilities Commission, see APPEAL AND REVIEW, 1.

Order of relative to the number of street railway tracks, the kind of rails to be used on a new bridge as an administrative matter, see APPEAL AND REVIEW, 2.

Jurisdiction of Supreme Court of Errors to determine the bounds of power of the superior court and the extent of its duties

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ORDERS—*continued.*

in reviewing an order of the Commission, see APPEAL AND REVIEW, 3.

Certiorari as the proper remedy of municipalities to obtain relief from an order of the Commission fixing the rates, see CERTIORARI, 1, 2.

Requiring local stops of interstate trains as interference with interstate commerce, see COMMERCE, 2, 3.

Distinction between orders as to safety and as to adequacy of service of an interurban railway operated at a loss, see COMMISSIONS, 4.

Impairment of contract to supply water by order providing for new classes of service, see CONSTITUTIONAL LAW, 7.

Orders fixing rates as impairment of obligation of contract to supply water at specified rate, see CONSTITUTIONAL LAW, 8.

Reasonableness of order of Commission as a question for the courts, see COURTS.

Presumption arising from approval of security issues by Commission, see EVIDENCE, 7.

Conclusiveness of findings in another case, see EVIDENCE, 2.

Fines for violation of orders to operate passenger trains, see FINES AND PENALTIES, 2.

Injunction as proper remedy to restrain enforcement of, see INJUNCTION, 1.

Reasonableness of, compelling operation of one train each way daily over a railroad which is likely to cause a loss to the carrier, see SERVICE, 13.

1. An order made more than twenty days after the final submission of the matter for decision on rehearing is not void by virtue of the provision of the Public Utility act that the Commission shall "hear the matter with all despatch, and shall determine the same within twenty days after final submission, and if such determination is not made within such time, it may be taken by any party to the rehearing that the order involved is affirmed," as the statute is merely directory as to the Commission, in no way going to its jurisdiction, and in so far as the parties are concerned simply authorizes them, pending final decision, to act without fear of penalty upon the assumption that the order is affirmed. Mt. Konocti Light & P. Co. v. Thelen (Cal.) 291.

2. The Illinois Commission, in approving a reduced schedule of block gas rates agreed upon between a city and a gas utility in consideration of the dismissal of a complaint against the company as to the reasonableness of existing rates, does not find that such rates are reasonable, or commit itself to the propriety of the block system of rates for gas. Evanston v. Public Service Co. (Ill.) 309.

ORDINANCES.

Regulating operation of jitney busses, see AUTOMOBILES, 5–7, 9, 13–17.

As to constitutionality of ordinances regulating automobiles operated as jitney busses, see CONSTITUTIONAL LAW, 2–4.

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ORDINANCES—*continued.*
Franchise ordinance requiring free service to municipality as interference with power of Commission to fix rates, see CONSTITUTIONAL LAW, 5.
Regulation of particular class of vehicles as discriminatory, see MUNICIPALITIES, 1.
Validity of ordinance regulating telephone rates, see RATES, 2.
Validity of municipal ordinance requiring interurban cars to stop at all corners on signal, see SERVICE, 3.

OVERHEAD EXPENSES.
Allowance for, in valuation, see VALUATION, 5, 20.

OWNERSHIP.
Of oil, see OIL, 1.
Of property of utility not in stockholders, see PUBLIC UTILITIES, 1.
Of extensions paid for by consumer, see SERVICE, 14.
Of water meters, see SERVICE, 71–76.

OWNERS OF EQUIPMENT.
Reduced telephone rates to, see DISCRIMINATION, 24.

PARTIES.
Effect of waiver of defense in favor of one party, see WAIVER, 1.

PART PERFORMANCE.
Estoppel by part performance of contract to render free service, see DISCRIMINATION, 22.

PASSENGER SERVICE.
Stopping of interstate passenger trains at small villages as interference with interstate commerce, see COMMERCE, 2, 3.
Fines for violation of order to operate trains, see FINES AND PENALTIES, 2.
Duty of railway operated at a loss to protect and carry passengers safely, see SERVICE, 10, 27.
Separate coaches for white and colored passengers, see SERVICE, 35.
Stopping of interstate trains when passenger service is inadequate, see SERVICE, 36, 37.

PAYMENT.
I. In general, 1, 2.
II. Prepayment, 3–5.
III. Discount for prompt payment, 6, 7.
IV. Security and deposit, 8–19.
a. In general, 8–13.
b. Jurisdiction of Commission, 14.
c. Amount of deposit, 15.
d. Interest on deposits, 16–18.
e. Application of deposit, 19.
V. Establishment of credit, 20, 21.
VI. Discontinuance of service to delinquent consumers, 22–25.

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PAYMENT—*continued.*

I. In general.

1. A utility has the right to take reasonable protective measures to insure payment for future service, although the ordinary tradesman may not make similar demands, since the utility is compelled to supply its service to all who demand it. Re Water, G. E. & T. Utilities Requiring Deposits (Cal.) 717.

2. In determining what rule or regulation of a utility to insure payment for future service will be reasonable, consideration must be given to the desirability of subjecting the general mass of consumers to only such burdens as are reasonably necessary to insure such payment. Re Water, G. E. & T. Utilities Requiring Deposits (Cal.) 717.

II. Prepayment.

3. Telephone companies in Washington are permitted to require advance payments for services under conditions defined by the Commission. Re Payment for Teleph. Service (Wash.) 951.

4. Utilities rendering service at flat rates may demand payment in advance for the period at which bills are normally rendered, but cannot demand guaranties or deposits for service to be rendered in the future. Re Water, G. E. & T. Utilities Requiring Deposits (Cal.) 717.

5. A rule requiring new telephone farm line subscribers, upon the installation of telephones, to pay a year's rental in advance, and for new individual business and residence line subscribers to pay three months' rental in advance, is reasonable. Re Valparaiso Teleph. Co. (Neb.) 578.

III. Discount for prompt payment.

6. A discount of 25 cents per month for prompt payment of bills for telephone service was approved by the Illinois Commission rather than a discount on the percentage basis, although the latter is regarded as more equitable. Re Forest City Teleph. Co. (Ill.) 666.

7. Permission was granted a telephone company to name a rate in its public schedule of 25 cents per month in excess of its regular rates, on condition only that if the telephone rates were paid on or before the 15th day of the current month in which service is rendered, a discount of 25 cents should be allowed. Re Webster Teleph. Co. (S. D.) 516.

IV. Security and deposit.

a. In general.

Discrimination in rules requiring security for payment of service, see DISCRIMINATION, 35–37.

8. Equity to both the utility and the consumer demands a recognition of a reasonable cash deposit as security for the prompt payment of the consumer's bills. Re Western United Gas & Electric Co. (Ill.) 317.

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PAYMENT—*continued.*

9. The practice of telephone company of requiring a deposit or cancelation fee, or any money, as a condition precedent to service, was ordered discontinued as unreasonable and unjust, except as to local long-distance calls originating at pay stations. Re Payment for Teleph. Service (Wash.) 951.

10. A water utility cannot refuse service to an applicant, although the owner of the property declines to be responsible for payment, where the applicant tenders a deposit to guarantee payment of bills for a period not less than the customary billing period of the utility and in no event less than one month. Public Service Commission v. Water Utilities (Mont.) 866.

11. A telephone utility may extend to its patrons the convenience of sending telegrams and long-distance telephone messages to the extent of such deposits as they may desire to make, or without a deposit. Re Water, G. E. & T. Utilities Requiring Deposits (Cal.) 717.

12. The rules and regulations of a public utility setting forth the terms and conditions relating to cash deposits to be made by consumers of gas, electricity, and steam heat, adopted for the purpose of securing the payment of monthly bills, were approved and the practice of the company with reference to such deposits prescribed. Re Western United Gas & Electric Co. (Ill.) 317.

13. Utilities may demand that consumers guarantee future bills by a cash deposit where they receive metered service under a credit established other than by a cash deposit and default in payments, provided that service shall not be discontinued for failure to make such deposit until after the expiration of the time specified in a notice of intention to discontinue service. Re Water, G. E. & T. Utilities Requiring Deposits (Cal.) 717.

b. Jurisdiction of Commission.

14. The fact that rules with reference to the requirement of a deposit or other security upon the installation of telephone instruments, and with reference to the payment for service in advance, affect rates, does not deprive the Commission from acting under chapter 117, § 85, of the Washington Laws of 1911, in promulgating rules and regulations with reference thereto. Re Payment for Teleph. Service (Wash.) 951.

c. Amount of deposit.

15. A maximum cash deposit of $2.50 for domestic or residence monthly metered service, or, in the case of larger consumers, a deposit not exceeding the average bill for twice the period for which collections are made, was held reasonable. Re Water, G. E. & T. Utilities Requiring Deposits (Cal.) 717.

d. Interest on deposits.

16. Utilities were required to pay 6 per cent interest on cash deposits to insure payment for metered service, except where the service is discontinued in less than twelve months. Re Water, G. E. & T. Utilities Requiring Deposits (Cal.) 717.

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PAYMENT—*continued.*

17. Water utilities requiring certain consumers to make a deposit to insure the exercise of ordinary diligence to protect meters must pay interest thereon at the rate of 6 per cent per annum. Public Service Commission v. Water Utilities (Mont.) 866.

18. A telephone utility need not pay interest on deposits made by patrons to insure payment of telegrams and long-distance telephone messages sent through the utility. Re Water, G. E. & T. Utilities Requiring Deposits (Cal.) 717.

e. Application of deposit.

19. Upon the failure of a consumer who has made a cash deposit, to pay a bill for metered service, the utility may apply the deposit in so far as necessary to liquidate the bill, and require that the deposit be restored to its original amount, provided that service shall not be discontinued until the deposit has been entirely absorbed and after the expiration of the time specified in a notice of intention to discontinue service. Re Water, G. E. & T. Utilities Requiring Deposits (Cal.) 717.

V. Establishment of credit.

20. Utilities may require an applicant for metered service to establish his credit before rendering service; and such credit may be deemed established if the consumer owns the premises, or makes a cash deposit, or furnishes a guaranty satisfactory to the utility, or has paid all bills of the utility promptly for a period of twelve months prior to the establishment of the rule. Re Water, G. E. & T. Utilities Requiring Deposits (Cal.) 717.

21. Prompt payment of bills for one year sufficiently establishes a consumer's credit so that a cash deposit to insure metered service should be returned at the end of such period. Re Water, G. E. & T. Utilities Requiring Deposits (Cal.) 717.

VI. Discontinuance of service to delinquent consumers.

22. A utility cannot discontinue metered service to consumers whose credit with the utility has become impaired or exhausted by failure to pay bills, unless it gives reasonable notice of intention to discontinue if the credit is not re-established. Re Water, G. & E. T. Utilities Requiring Deposits (Cal.) 717.

23. The California Commission refused to permit water, gas, electric, or telephone utilities to discontinue service to consumers by reason of nonpayment of bills for service theretofore delivered, since the utilities can protect themselves by demanding payment or the establishment of credit in advance of delivery of service. Re Water, G. E. & T. Utilities Requiring Deposits (Cal.) 717.

24. A water company should not turn off the supply of water for an entire street to compel an individual customer on the street to pay his water bill. McCammon v. Harkness (Idaho) 558.

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PAYMENT—*continued.*

25. A utility cannot discontinue unmetered service to consumers for failure to make payment in advance as required, unless it gives reasonable notice of intention to discontinue if payment is not made. Re Water, G. E. & T. Utilities Requiring Deposits (Cal.) 717.

PENALTIES.

See FINES AND PENALTIES.

PERISHABLE PRODUCTS.

Operation of regular trains to meet special requirements of shippers of, see DISCRIMINATION, 34; SERVICE, 34.

PERMISSION.

Of Commission to operate telephone exchange, see TELEPHONES, 1.

PERSONAL INJURIES.

Damages on account of, as operating expense, see RETURN, 21.

PERSONAL SURETIES.

Validity of regulation requiring owners of jitney busses to file bond of surety company to the exclusion of personal sureties, see AUTOMOBILES, 15, 17.

PHYSICAL CONNECTION.

Refusal of telephone company to afford, as discrimination, see DISCRIMINATION, 32.

By telephone lines, see SERVICE, 56–66.

PLATFORMS.

Height of station platform, see SERVICE, 30.

PLEADING.

1. The rule that upon the complainant asking for increases in the rates of a public service corporation rests the burden of proving the reasonable necessity therefor, operates in and of itself in behalf of each respondent as a plea in denial of the allegations of the complaint. Landon v. Lawrence (Kan.) 763.

2. The Commission will confine its investigation to the matter contained in the complaint alleging excessive rates, where the answer, averring that the rates were inadequate and requesting the Commission to ascertain and fix adequate rates, was not in the form required by law to amount to an application to increase rates, and especially where few details in the matter of physical and operating data were given. Bosshard v. Hussa Bros. Light & Water Co. (Wis.) 584.

3. A complaint to the Idaho Public Utilities Commission will be dismissed where it is not verified as required by their rules and regulations. Wiseman v. Rupert Electric Co. (Idaho) 901.

POLICE POWER.

Power of Public Service Commission to change contract rates in exercise of, see CONSTITUTIONAL LAW, 8.

Regulation of rates as exercise of, see CONSTITUTIONAL LAW, 16.

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POLICY.

Of Illinois Commission to granting of certificate of convenience to another company to correct inadequate service by existing company, see MONOPOLY AND COMPETITION, 4.

POWERS.

Of Commission, see COMMISSIONS, I.

Delegation of powers by legislature, see CONSTITUTIONAL LAW, 12–15.

PREPAYMENT.

Right to require prepayment for service, see PAYMENT, 3–5.

PRESUMPTIONS.

See EVIDENCE, 3–7.

PRIVATE PLANT.

Jurisdiction of Commission over, where merged with public plant, see RATES, 7.

PROFITS.

See RETURN.

PROMPT PAYMENT.

Discount for, see PAYMENT, 6, 7.

Right of consumer to return of deposit after making prompt payment of bills for period of one year, see PAYMENT, 21.

PROPERTY NOT IN USE.

Valuation of, see VALUATION, 22–27.

PROPERTY NOT OWNED BY UTILITY.

Valuation of, see VALUATION, 38.

PROPORTION.

Of stock to bonds, see SECURITY ISSUES, 24.

PROSPECTIVE BENEFIT.

Consideration of prospective benefit and use of bridge in determining the equitable portion which a street railway company is required to pay, see APPORTIONMENT, 10.

PUBLIC PLANT.

Jurisdiction of the Commission over private plant merged with, see RATES, 7.

PUBLIC UTILITIES.

I. In general, 1.

II. What are, 2–4.

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PUBLIC UTILITIES—*continued.*

I. In general.

See also AUTOMOBILES; BRIDGES; ELECTRICITY; FERRIES; GAS; HEATING; INTERURBAN RAILWAY; JITNEYS; MUNICIPAL PLANT; NATURAL GAS; OIL; RAILROADS; STREET RAILWAYS; TAXICABS; TELEGRAPHS; TELEPHONES; WAREHOUSES; WATER.

See also ACCOUNTING; APPORTIONMENT; CERTIFICATE OF CONVENIENCE AND NECESSITY; CONSOLIDATION, MERGER AND SALE; DEPRECIATION; DISCRIMINATION; INTERCORPORATE RELATIONS; MONOPOLY AND COMPETITION; PAYMENT; RATES; RETURN; SECURITY ISSUES; SERVICE; VALUATION.

Right of telephone company to permit use of property by other utilities, see LICENSES, 1.

Losses in one department not to be made up by special charges in another, see RATES, § 3.

1. A telephone company is an entity separate and distinct from its stockholders, and franchise rights, physical property, and the like belong not to the stockholders as such, or to them as individuals, but to the corporation. Knott v. Southwestern Teleg. & Teleph. Co. (Mo.) 963.

II. What are.

2. A corporation authorized to construct 2 miles of railroad from a quarry to a connection with a belt-line railroad in a city, and used for the purpose of carrying passengers to a ferry, but chiefly to carry shipments of rock from the quarry bunkers, is a public utility within the jurisdiction of the California Commission. Re Castro Point R. & Terminal Co. (Cal.) 632.

3. Telegraph companies which buy from the New York Stock Exchange the right to furnish stock quotations by ticker service or otherwise at retail to subscribers in a city, which service cannot be furnished without the special privilege of using the public ways for the lines and cables essential therefor are engaged in furnishing and rendering a service for public use, and are subject to the jurisdiction of the Public Service Commission under § 2, chap. 784, of the Massachusetts Acts of 1913. Stock Ticker Case (Mass.) 1068.

4. A person supplying water to buildings under an agreement to furnish a water supply "for all the buildings, in number about 100" contemplated to be erected, which does not restrict him to supply only those buildings, is engaged in a public service, so that a Public Service Commission may regulate the rates, although a plant is constructed for the purpose of supplying only 100 buildings. Yeatman v. Towers (Md.) 811.

PUMPING PLANT.

Allowance for abandoned pumping plant used as material yard, in valuation, see VALUATION, 23.

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RAILROADS.

Right of terminal railroad to have joint rates with connecting railroads, see CARRIERS, 1.

Long and short haul, see DISCRIMINATION, 6, 10.

Reduced rates for charity or benevolent purposes, see DISCRIMINATION, 29.

Operation of regular freight service to meet the special requirements of shippers of perishable farm products, see DISCRIMINATION, 34.

Burden of proof that securities issued without approval of Commission were exempt from its control, see EVIDENCE, 11.

Injunction as proper remedy to restrain enforcement of orders requiring operation of trains, see INJUNCTION, 1.

Corporation authorized to construct short railroad from quarry to connect with city belt-line as a public utility, see PUBLIC UTILITIES, 2.

Rates for switching, see RATES, 30.

Security issues, see SECURITY ISSUES, 3, 4, 7, 8, 9, 13, 15, 16.

Service by, see SERVICE, 11, 12, 33–39.

RAILROAD SWITCHING.

Rates for, see RATES, 30.

RAILS.

Interference by court of order of Commission relative to the kind of rails to be used on a bridge used jointly by a city and a street railway company, see APPEAL AND REVIEW, 2.

RATES.

I. In general, 1–3.

II. Jurisdiction, powers, and functions of Commission, 4–7.

III. Reasonableness; factors to be considered, 8–14.

a. In general, 8–11.

b. Comparison of rates, 12.

c. Cost of service, 13, 14.

IV. Discrimination.

V. Rates of particular utilities, 15–52.

a. Electricity, 15–20.

1. In general, 15–17.

2. Kinds of service, 18, 19.

3. Reasonableness of particular rates, 20.

b. Gas, 21.

c. Natural gas, 22–29.

1. In general, 22–24.

2. Kinds of service, 25–27.

3. Minimum charge, 28, 29.

d. Railroads, 30.

e. Steam heating, 31.

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RATES—*continued.*
f. Street railway, 32, 33.
g. Telephones, 34–40.
1. In general, 34–37.
2. Business or residence rates, 38.
3. Reasonableness of particular rates, 39, 40.
h. Water, 41–52.
1. In general, 41, 42.
2. Minimum charge—meter rental, 43, 44.
3. Flat or meter rates, 45–48.
4. Fire protection service, 49, 50.
5. Reasonableness of particular rates, 51, 52.

I. In general.

Certiorari as proper remedy for municipalities to obtain relief from an order fixing rates, see CERTIORARI, 1, 2.

Presumption of authority to abrogate contract for free service, see EVIDENCE, 5.

Power of legislature to prescribe the rates of carrying vehicles upon highways or to delegate such power to municipalities, see LEGISLATURE, 1.

Payment of, by consumers, see PAYMENT.

1. A stipulation in a municipal franchise limiting the price to be charged for gas furnished to private consumers is invalid in the absence of express authority empowering the municipality to regulate rates. Re Douglas Gas Corp. (Ariz.) 1063.

2. The Missouri Commission, in fixing telephone rates in a city, will disregard an ordinance purporting to regulate such rates passed prior to the statute authorizing cities to regulate rates, and will not determine the effect of the failure of the mayor to sign the ordinance. Re Southwestern Teleg. & Teleph. Co. (Mo.) 1087.

3. Losses or lack of profits from the railway and municipal lighting departments of a utility cannot be recouped, under independent and separate rates, at the expense of light and power patrons. Re Macon R. & Light Co. (Ga.) 648.

II. Jurisdiction, powers, and functions of Commission.

Power of Commission to repeal or to declare unconstitutional a statute forbidding discrimination in telephone rates, see COMMISSIONS, 6.

Franchise ordinance requiring free service to city as interference with power of Commission to fix rates, see CONSTITUTIONAL LAW, 5.

Effect of restriction in rates in franchise upon the right of the Commission to regulate, see CONSTITUTIONAL LAW, 10.

Delegation of powers to Commission to regulate, see CONSTITUTIONAL LAW, 12, 15.

4. The Indiana Public Service Commission has power to regulate the rates of a public utility that has surrendered its franchise, containing a fixed rate to be charged for services rendered, and has accepted in lieu P.U.R.1915E.

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RATES—*continued.*

thereof an indeterminate permit to operate its plant. Re Peru Heating Co. (Ind.) 502.

5. The New York Commission is without power to permit a railroad company authorized by statute to charge a maximum fare of 3 cents per mile and charging a maximum fare of more than 2 cents per mile to increase its mileage books rates from 2 cents per mile to 3 cents per mile, although its return from passenger service may be inadequate, since § 60 of the railroad law, commonly known as the mileage book law, which absolutely prohibits the company from charging more than 2 cents per mile for such books, is not in conflict with the public service law, and is not, expressly or by implication, repealed by it. Re Ulster & D. R. Co. (N. Y.) 126.

6. A Public Service Commission has jurisdiction to fix water rates, irrespective of whether the supply is furnished by a corporation or an individual, under Md. Code Pub. Civ. Laws, article 23, §§ 413 and 415, extending the jurisdiction of the Commission over all water companies, and declaring that the term "water company" includes a corporation and a person. Yeatman v. Towers (Md.) 811.

7. Upon the merger of a small water plant engaged in a private service with large corporations engaged in a public service, the public character of the service extends to the entire plant, so that a Public Service Commission may regulate the rates of the former private service. Yeatman v. Towers (Md.) 811.

III. Reasonableness; factors to be considered.

a. In general.

Presumption as to reasonableness of voluntary rates, see EVIDENCE, 3.
Presumption as to reasonableness of rates influenced by competitive conditions, see EVIDENCE, 4.
Burden of proof upon application to increase rates, see EVIDENCE, 8.
Burden of proof of inability to pay increase of water rates, see EVIDENCE, 10.
Normal earning power as basis for adjusting, see RETURN, 12.

8. The existence of a large floating indebtedness incurred without regulation by a street railway company, applying for authority to increase its fares, makes it essential to scrutinize its capital expenditures with great care, even though all outstanding stocks and bonds were issued under public supervision. Re Blue Hill Street R. Co. (Mass.) 370.

9. In determining the reasonableness of ferry rates, the fact that a large part of the patronage is due to the fact that liquor is sold in one county, and not sold in another, and that the entire state is soon to become dry, should not be taken into consideration, but the determination of the Commission should be based upon present operating conditions. Twin Falls Commercial Club v. Great Shoshone & T. F. Water Power Co. (Idaho) 660.

10. In considering an application of a natural gas company for an increase in its rates, the California Commission should give due con-

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sideration to the fact that such rates were voluntarily established, and that, apparently relying upon the company's ability to grant and willingness to continue such rate, a relatively large number of patrons have purchased appliances and made other material expenditures incidental to obtaining such gas service. Re Southern Counties Gas Co. (Cal.) 197.

11. The reasonableness of rates cannot be entirely determined from earnings following an increase of rates, occasioning some degree of dissatisfaction among patrons, and under depressed business conditions. Re Macon Railway & Light Co. (Ga.) 648.

b. Comparison of rates.

12. In determining the reasonableness of a schedule of ferry rates, comparison with the rates charged by other ferry companies is of little or no value where the conditions and the circumstances under which they are operated are different. Twin Falls Commercial Club v. Great Shoshone & T. F. Water Power Co. (Idaho) 660.

c. Cost of service.

13. The Wisconsin Commission, in making a preliminary analysis in a rate case, takes into account every possible detail without regard to the ultimate schedule to be determined, the aim being the determination of the true cost of operation. Re Light & Water Commission (Wis.) 539.

14. The reported cost for generating electricity is acceptable for the purpose of determining the reasonableness of the rates charged therefor, where it appears to be less than the average cost of similar plants. Bosshard v. Hussa Bros. Light & Water Co. (Wis.) 584.

IV. Discrimination.

For discrimination in rates, see DISCRIMINATION, 1.

V. Rates of particular utilities.

a. Electricity.

1. In general.

15. The Commission in passing on a proposed rate increase by an electric utility will not accept as conclusive or binding on it the contract price paid for current furnished by another utility owned by substantially the same interests, particularly where the utility is the largest customer and is charged higher prices than other customers. Re Macon R. & Light Co. (Ga.) 648.

16. The Illinois Commission authorized a distributing utility to change its rates for water and electricity furnished to its consumers in a village virtually a suburb of a Wisconsin city, by putting into effect the rates established by the Wisconsin Commission for the gener-

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RATES—*continued.*
ating and producing utility located in that city. Re South Beloit Water, Gas & Electric Co. (Ill.) 327.

17. A meter rental charge of 25 cents a month in addition to the regular charge for electricity furnished was ordered discontinued and a minimum bill to cover the consumer cost was substituted therefor by the Commission upon the ground that public utilities are required to furnish such equipment; the interest on this investment being covered by the general return on the investment allowed, a minimum bill being allowable to protect the utility from an inadequate remuneration from the small consumer. Bosshard v. Hussa Bros. Light & Water Co. (Wis.) 584.

2. Kinds of service.

18. Testing lamps used for testing coils and also for the illumination of a machine in which the coils are wound, the current for which is supplied by the motor generator set, need not be classed as lighting. Bell Electric Motor Co. v. Public Service Electric Co. (N. J.) 248.

19. Service for an electric sign and for ordinary factory illumination, whether furnished directly from the mains of an electric company or through the medium of a motor generator set, should be charged for in accordance with the regular lighting schedule. Bell Electric Motor Co. v. Public Service Electric Co. (N. J.) 248.

3. Reasonableness of particular rates.

20. A rate of $27 a year for each electric street lamp was reduced to $22 where it appeared that the prevailing rate for the same quantity of service in other places was lower. Bosshard v. Hussa Bros. Light & Water Co. (Wis.) 584.

b. Gas.

Order approving reduced schedule of block gas rates without considering propriety of block system, see ORDERS, 2.

21. A minimum monthly charge of 75 cents for small consumers of gas was authorized by the Commission notwithstanding a municipal franchise provided that a uniform charge for gas not to exceed $1.50 per thousand feet should be made and that a minimum charge of 75 cents may bring about a different rate to small consumers, it appearing that municipal corporations were not authorized to regulate rates of public service corporations. Re Douglas Gas Corp. (Okla.) 1063.

c. Natural gas.

1. In general.

22. Rates to consumers of natural gas should, if possible, be fixed so as to provide for the company the amount of revenue reasonably necessary to meet its needs, but should not be so high as to discourage or diminish the use of natural gas as a fuel. Landon v. Lawrence (Kan.) 763.

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RATES—*continued.*

23. Rates established by the Kansas Commission to be paid a producing natural gas company were predicated on the maintenance of the quality of gas supplied at substantially the same standard theretofore maintained by the company, since a rate fixed for gas of a certain quality might be too high if the standard were materially reduced. Landon v. Lawrence (Kan.) 763.

24. Rates voluntarily established, upon a change from an artificial to a natural gas service, by a gas company serving several communities, will not, after only eleven months' operation, be increased by the Commission in one particular community upon the showing that for such a period the rates as applicable to that locality may not have yielded the anticipated revenue. Re Southern Counties Gas Co. (Cal.) 197.

2. Kinds of service

25. Gas used for industrial fuel may be supplied at a lower rate than that charged for gas used for other purposes, where delivered at a time when the minimum load is being carried, when it can be transported without interference with other business, and when the carrying system would otherwise be partly idle, time and condition of delivery furnishing a sound and proper basis for classification of the service. Landon v. Lawrence (Kan.) 763.

26. A higher rate cannot be charged for natural gas used in the operation of gas engines merely on the theory of the value of the service to the consumer. Landon v. Lawrence (Kan.) 763.

27. A higher rate should not be charged for natural gas used for cooking and lighting than that used for other purposes on the theory that it is worth proportionately very much more per unit for cooking and lighting purposes than for heating, since the value of the service to the consumer, taking into consideration the use to which it is applied, is not a proper basis of rate making. Landon v. Lawrence (Kan.) 763.

3. Minimum charge.

28. An equitable minimum monthly charge should be provided for in fixing a natural gas rate schedule on the ground of the company's preparedness and readiness to serve. Landon v. Lawrence (Kan.) 763.

29. A uniform minimum monthly charge of 50 cents was fixed as the amount which should be paid throughout the territory served by natural gas companies, and collections on account of such charge were ordered retained in full by the distributing companies. Landon v. Lawrence (Kan.) 763.

d. Railroads.

Right of terminal railroads to have joint rates with other railroads with which it connects, see CARRIERS, 1.

30. Railroad companies furnishing empty cars to be loaded were au-

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RATES—*continued.*
thorized to make an extra switching charge of $3 per car for such service between points within their switching limits in cities or at terminals, where they receive no freight revenue in such districts for the car other than a switching charge, provided that lower switching or intra-city or intra-terminal rates, or rates for furnishing cars, are not advanced. Railroad Commission v. Railroads (La.) 33.

e. Steam heating.

31. A meter rate for steam heat, based on the amount of steam condensed in the consumer's premises as measured by the water of condensation, is more just to both the consumer and the utility than a flat rate, based on the amount of radiation installed, which leads to excessive use and waste of steam. Re De Kalb-Sycamore Electric Co. (Ill.) 904.

f. Street railway.

32. Two street railway companies operating within a city were ordered to establish a joint fare of 5 cents for the transportation of passengers within the city limits, by giving and honoring free transfers, upon a finding by the Commission of a public need for free transfers, and that such requirement would not unduly reduce the earnings of the companies as to be unjust to them or as to be against the public interest. Green Bay v. Bay Shore Street R. Co. (Wis.) 619.

33. A street railway company was not justified in charging for transfers where the total length of ride secured by the privilege was no longer than the ride secured by the payment of a single fare upon other parts of the system where cars are routed through. Re Norfolk & B. Street R. Co. (Mass.) 411.

g. Telephones.

1. In general.

Apportionment of value between city and rural lines in determining reasonableness of telephone rates, see APPORTIONMENT, 6.

Statute forbidding discrimination in telephone rates as impairing obligation of contract guarantying free service to stockholders, see CONSTITUTIONAL LAW, 6.

34. It is unfair to attempt any comparison between rates charged by a company furnishing telephone service upon a commercial basis and including presumably a reasonable allowance for interest on capital invested and for depreciation of the property, and the minimum annual cash disbursement at which farmers can secure grounded line telephone service with an excessive number of subscribers on the line, and with no allowance made for depreciation or interest or for the labor required to keep up the line. Re Grange Hall Farmers' Teleph. Co. (Wis.) 594.

35. A telephone company was authorized to make a slight increase in its single rate for all classes of service, by charging more for the

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higher class of service furnished on one and two party lines than on multiparty rural lines, although the difference in cost of furnishing the various classes of service was not large, it appearing that the revenue under the old rate was slightly less than the full amount required, that the operating expenses were normal and the investment conservative. Re Prospect, G. & B. B. Teleph. Co. (Wis.) 367.

36. A telephone company was allowed to put into effect a new schedule of increased rates necessitated by the reconstruction of its telephone property to replace an obsolete grounded line magneto service, no objection having been made to the new schedule. Re Gillespie Home Teleph. Co. (Ill.) 214.

37. A telephone company was authorized to reduce its rates to meet the lower rates of a competitor, where it did not appear that the proposed rates were within the operation of § 15 of the telephone act, which provides that no rates shall be allowed which are inadequate and which naturally tend to destroy competition. Re Northwestern Teleph. Exch. Co. (Minn.) 694.

2. Business or residence rates.

38. A telephone company may charge a higher rate to business subscribers than to ordinary subscribers. Re Monroe Independent Teleph. Co. (Neb.) 57.

3. Reasonableness of particular rates.

39. A telephone company was authorized to increase switching charges for rural telephone companies connecting with its switchboard from $3 a year to $4.50 a year. Re Southern Michigan Teleph. Co. (Mich.) 41.

40. A toll charge at the rate of 10 cents for the first 12 miles or fraction thereof, and 5 cents for each additional 8 miles or fraction thereof for all messages going to or through two or more exchanges, and a charge of 5 cents to nonsubscribers for calls within any exchange limit, is in accordance with the practice of telephone companies in Michigan, and is reasonable and warranted, in view of an investment in toll lines of $291,320.09, and in view of the fact that a deficit from existing rates is not covered by proposed increases in rentals asked for. Re Southern Michigan Teleph. Co. (Mich.) 41.

h. Water.

1. In general.

Right of water company to make increase in rates to conform to its authorized charges in another city, to secure uniformity in accounting, see ACCOUNTING, 3.

Impairment of contract to supply water by order providing for new classes of service or changing rate, see CONSTITUTIONAL LAW, 7, 8.

41. Objection that a water company received all the revenue from the sale of water although the village owned the mains and a part of

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RATES—*continued.*
the pumps was dismissed as being without merit, where it appeared that the water company was entitled to the use of the mains by virtue of a contract providing water for fire protection in consideration of an annual amount and the use of the water mains of the village for commercial purposes, and that the annual cost to the village for fire protection, taking into consideration the amount paid plus the annual fixed charges upon its investment in the distributing system, was reasonable, and that the rate charged for commercial service was likewise reasonable. Bosshard v. Hussa Bros. Light & Water Co. (Wis.) 584.

42. A consumer of water at flat rates who installs additional taps without the consent of the utility is liable to pay at the regular rate provided for the additional service. Public Service Commission v. Water Utilities (Mont.) 866.

2. Minimum charge—meter rental.

43. The minimum rate for water under a meter rate schedule was graduated according to the size of the meter, limiting the amount of water to be used under the minimum to the same amount for each size of meter. Re Light & Water Commission (Wis.) 539.

44. A utility may make a reasonable minimum charge for water based on the size of the meter and consumption of water, to protect itself from loss if no water is consumed, but it cannot make such charge in the form of rental for the meter. Public Service Commission v. Water Utilities (Mont.) 866.

3. Flat or meter rates.

45. A municipal water utility was authorized to install meters upon the premises of such consumers as it might see fit, and to charge according to a tentative meter-rate schedule established by the Commission, although the plant and other records and data did not furnish sufficient information for proper rate making, where it was claimed that flat rates to some consumers were inequitable or inadequate, and that the use of such rates had been abused; and where it appeared necessary that there should be an early decision, and that a tentative schedule should be established until proper records were kept and more accurate data would be available. Re Light & Water Commission (Wis.) 539.

46. A flat rate for the sale of water is objectionable as permitting waste or reckless and unnecessary use by the consumer. Re Light & Water Commission (Wis.) 539.

47. A water company may substitute a meter rate, based upon the cost of service, for a flat rate for water supplied to its consumers, when it appears that an inadequate supply will be thus augmented and that such method of charge is for the best interests of the consumer and the public. Re Central Illinois Public Service Co. (Ill.) 671.

48. A water company, on being permitted to change its charge for water supplied from a flat rate to a meter rate, was authorized to change the rates on file with the Commission on condition that no con-

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RATES—*continued.*
sumer should be required to pay a larger bill than would be due for a greater consumption. Re Central Illinois Public Service Co. (Ill.) 671.

4. Fire protection service.

49. The rates of a water company for fire hydrant service supplied to a city can, in no event, be more than the reasonable value of the service to the city, irrespective of the investment return and cost to the company; and the rates applicable to a large city for such service will not be established for a small city where the quality of the service is not the same. Re San Jose Water Co. (Cal.) 706.

50. A charge of $1,392 per year for water furnished by a municipal waterworks for fire protection to a city of 1,500 inhabitants was held not unreasonable. Re Light & Water Commission (Wis.) 539.

5. Reasonableness of particular rates.

51. The sum of $1 per quarter was held to be a proper charge for each additional consumer of water on the same meter. Re Light & Water Commission (Wis.) 539.

52. A maximum charge of $1 for turning on water that has been shut off because of nonpayment of bills was held reasonable. Public Service Commission v. Water Utilities (Mont.) 866.

READINESS TO SERVE.
Minimum charge to provide for, see RATES, 28.

REAL ESTATE.
Test for determining value of land on which plant is located in valuation proceedings, see VALUATION, 28.

REASONABLENESS.
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Burden of proof of reasonableness of request for extension of service, see EVIDENCE, 9.
Of rates, see RATES, 8–13, 20, 39, 40, 51, 52.
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Presumption arising from absence of records of cost of construction, see EVIDENCE, 6.

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Power of Commission to repeal statute forbidding discrimination in telephone rates, see COMMISSIONS, 6.

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Amount necessary for, see DEPRECIATION, 4.

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Right of telephone company to charge higher rates for business subscribers, see RATES, 38.

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RESTORING SERVICE.

Reasonableness of charge for, to delinquent consumers, see RATES, 52.

RESTRAINT OF TRADE.

Jurisdiction of Colorado Public Utilities Commission over petition alleging, see COMMISSIONS, 5.

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b. Ferries, 26, 27.
c. Street railways, 28, 29.
d. Telephones, 30–36.
e. Toll bridges, 37.
f. Water, 38, 39.

I. In general.

1. Although the return from the increased sales of natural gas for industrial purposes may be less than the cost of the gas plus ordinary losses, such sales may reduce the cost of service, provided they use only gas that would otherwise go to waste due to inability to dispose of the gas supply which the company is required to purchase in accordance with the contractual minimum. Re Southern Counties Gas Co. (Cal.) 197.

2. A telephone company was directed to provide for additions and betterments to its property in the future out of new capital secured through the sale of stock, rather than out of earnings at the expense of the service and the proper maintenance of property already in existence. Re Monroe Independent Teleph. Co. (Neb.) 57.

3. Proposed increases in the rates of a telephone company cannot be said to be unreasonable where they produce a revenue hardly sufficient to cover a deficit under existing rates, and are not higher than rates in other parts of the state where like quality of equipment is used and service given. Re Southern Michigan Teleph. Co. (Mich.) 41.

4. It does not necessarily follow that because the business of a public service corporation cannot be conducted at a loss as a whole, that investments to serve any consumer, or group of consumers, should

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show the same percentage of profit. Re San Jose Water Co. (Cal.) 706.

5. The rental value of a dwelling necessary for the accommodation of the gateman or toll master of a toll bridge, and occupied for the owner of the bridge, should be considered as part of the bridge income, the value of the house having been allowed as part of the value of the bridge property. Gates v. Bridgeport Toll Bridge Co. (Wis.) 602.

6. A street car company was held entitled to have an amount received from insurance and salvage of a street car barn and rolling stock, and from a sale of the remainder of the cars, that was not reinvested in permanent property but was used in reconstruction work, liquidated from earnings, and to receive interest from it to the extent it remains unliquidated, and to treat it as an operating deficit, where the reconstruction was necessary, even though the amount could not be regarded as part of the capital invested in determining the basis of a fair return. Re Blue Hill Street R. Co. (Mass.) 370.

7. A public service corporation was held entitled to have the amount of discount on the sale of bonds amortized from earnings during their life, and to receive interest upon floating indebtedness incurred to supply the deficiency in capital caused by the discount, until the impairment is made good from earnings, although the amount could not be considered as part of the capital invested in determining the basis of a fair return. Re Blue Hill Street R. Co. (Mass.) 370.

II. Factors to be considered.

8. In determining the revenue to which a street railroad is entitled, allowance was made for an amount equal to a fair return upon the capital honestly and prudently invested, without deducting the accrued depreciation, where failure to make due provision for depreciation was not attributable to mismanagement and no dividends had been paid. Re Blue Hill Street R. Co. (Mass.) 370.

9. In determining the revenue to which a street railway company is entitled, allowance was made for an amount equal to a fair return upon the capital honestly and prudently invested, without deducting the accrued depreciation, where failure to make due provision for depreciation was not due to payment of unwarranted dividends or otherwise attributable to mismanagement. Re Norfolk & B. Street R. Co. (Mass.) 411.

10. Rates paid on the amount invested by a telephone company previous to a merger have no bearing or relation to the rates to be charged in the future, which must in all fairness be based on the necessary investment now and in the future in use for the purpose of furnishing the quality and quantity of service demanded by the subscribers. Re Southern Michigan Teleph. Co. (Mich.) 41.

11. In determining the amount of revenue necessary for natural gas companies in a rate-making proceeding, the Kansas Commission considered that the actual bona fide investment in the company's property should be protected, and that the payment of the indebtedness should,

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if reasonably possible, be provided for from the earnings of the property and from its salvage value at the end of a six-year period, it being possible to make only a rude approximation of the amortization period on account of the speculative character of the business. Landon v. Lawrence (Kan.) 763.

12. The normal earning power of a public service corporation, so far as it can be ascertained, should in general be the controlling basis in adjusting rates. Re Norfolk & B. Street R. Co. (Mass.) 411.

III. Operating expenses.

a. In general.

13. An amount received from insurance and salvage of a street car barn and rolling stock, and from a sale of the remainder of the cars, that is not reinvested in permanent property, but is used in reconstructing roadbed and track, is an expense properly chargeable against operation, and cannot be regarded as part of the capital invested in determining the basis of a fair return. Re Blue Hill Street R. Co. (Mass.) 370.

14. In determining the amount necessary for operating expenses for a telephone company, an allowance of an annual rental of $1.60 per year to subscribers owning their own telephones was made, as provided by Conference Ruling No. 15 of the Illinois Commission. Re Colchester Farmers' Teleph. Co. (Ill.) 23.

15. Rates for natural gas should be fixed so as to provide a reasonable margin of return for unexpected outlays liable to occur in conducting so hazardous an enterprise, and, since the public is vitally interested in the continuation of the service, no unreasonable restriction should hamper the companies in reaching a new source of supply and serving the public as long and as well as practicable. Landon v. Lawrence (Kan.) 763.

16. The cost to a utility of making an initial service installation is a proper capital account charge, and therefore should not be considered as an operating charge or as in any manner assessable against the individual consumer. Re Water, G. E. & T. Utilities Requiring Deposits (Cal.) 717.

17. The amount of an annual per cent of gross income of a telephone company, paid to another company as a license charge for transmitters, receivers, and induction coils, will not be allowed as an operating expense in computing the return, where the value of the instruments has been taken into account in arriving at the present fair value of the plant. Re Southwestern Teleg. & Teleph. Co. (Mo.) 1087.

18. An extraordinary expense which will not again be incurred by an electric utility in the dismantling of primary lines of the company supplying it with current and transferring the current distribution to the primary lines of the utility will not be considered in determining its earnings for rate-making purposes,—assuming it to be a proper charge to operating expenses. Re Macon R. & Light Co. (Ga.) 648.

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RETURN—*continued.*

b. Salaries.

19. An amount paid to the general manager of a street railway company as adjustment of back salary was not considered in determining whether the company was entitled to greater earnings, where the payment was made out of surplus funds, although the amount of the salary was open to criticism. Re Norfolk & B. Street R. Co. (Mass.) 411.

c. Injuries and damages.

20. Losses due to the extraordinary conditions that surround the operation of a toll bridge, which can hardly be foreseen, must be given some consideration in determining the rate of return to be allowed. Gates v. Bridgeport Toll Bridge Co. (Wis.) 602.

21. In a toll-bridge rate inquiry, cognizance must be taken of the probability of damage to its patrons, and resultant claims therefor Gates v. Bridgeport Toll Bridge Co. (Wis.) 602.

d. Bad accounts.

22. A charge of a certain amount per month for bad accounts should not be allowed in the operating expenses of a telephone company, when the Commission allows it to make a rate of 25 cents in excess of the actual rates to be collected if bills are not paid on or before the 15th of each month. Re Webster Teleph. Co. (S. D.) 516.

e. Insurance.

23. The cost of tornado and other insurance is a proper charge to the operating expenses of a telephone company, if such insurance is actually taken out. Re Webster Teleph. Co. (S. D.) 516.

IV. Reasonableness of particular amounts.

a. Electricity.

24. An electric light and power company was ordered to reduce its rates by putting into effect a new schedule which would produce a return of 7 or 8 per cent on the investment, although it was possible to order a still lower rate were it not for the fact that it was necessary for the company to amortize some of its early losses and to acquire meters owned by consumers. Mathews v. Viola Light & P. Co. (Wis.) 360.

25. A utility was denied authority to increase rates in its electrical departments, where, if expenses were properly apportioned between the departments, and due allowance made for depreciation, net earnings would produce a return of 8.25 per cent of the value of the property used for such department. Re Macon R. & Light Co. (Ga.) 648.

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b. Ferries.

26. A return of 30 per cent on an investment of $3,100 in a ferry is excessive. Twin Falls Commercial Club v. Great Shoshone & T. F. Water Power Co. (Idaho) 660.

27. A return of 10 per cent per annum on the total investment in a ferry was held to be a reasonable return for this class of public utility, and for insurance against operation at an extrahazardous point. Twin Falls Commercial Club v. Great Shoshone & T. F. Water Power Co. (Idaho) 660.

c. Street railways.

28. A street railroad company was authorized to increase its fares, where net earnings over and above proper operating expenses and fixed charges, without making any allowance for depreciation or for necessary charges to profit and loss, only produced in a series of years an average approximate return of 4 per cent upon the stock, the company not having been mismanaged and no dividends in fact having been paid. Re Blue Hill Street R. Co. (Mass.) 370.

29. A street railway company was authorized to increase its rates of fare so that additional revenue would be produced that would permit a 6 per cent return to its stockholders and an adequate allowance to be made for maintenance of way, structure, and equipment and depreciation, taking into consideration savings to be effected by greater economies of operation, although earnings were affected by a financial depression, where it did not appear that the return, after proper deductions, would have been adequate if earnings had been normal. Re Norfolk & B. Street R. Co. (Mass.) 411.

d. Telephones.

30. A telephone company was authorized to put into effect increased rates which would produce a return of 6.23 per cent of the present fair value of the particular exchange, such rates being approximately those charged by similar companies in like cities, although the revenue would not permit an allowance for depreciation and contingent reserve, where the operating expenses of the exchange could be reduced by prorating the salary of its manager to other exchanges under his supervision, and it was probable that increased earnings would result from the plant as rebuilt. Re Southwestern Teleg. & Teleph. Co. (Mo.) 1087.

31. A telephone company was allowed to increase its rates so as to produce a return on 6.4 per cent on the estimated value of its physical property. Re Colchester Farmers' Teleph. Co. (Ill.) 23.

32. In fixing the rates of a telephone company it was held that the dividends should equal an amount not less than 7 per cent of the plant. Re Webster Teleph. Co. (S. D.) 516.

33. An allowance of 7 per cent dividends on a telephone investment was held reasonable. Re Crownover Teleph. Co. (Neb.) 571.

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RETURN—*continued.*

34. Rates proposed by a telephone company are reasonable where it appears that the expenses including an 8 per cent allowance for maintenance and depreciation on the reproduction value of the property new, and an allowance of 7 per cent on the total capital liability, would be more than the present earnings from such rates, and where the further development of the plant would increase the revenue to approximately 7 per cent on the investment. Re Valparaiso Teleph. Co. (Neb.) 578.

35. A return of 7 per cent on the money actually invested by the stockholders of a telephone company was held not to be unreasonably high, especially where stockholders have made sacrifices in the form of labor and services in excess of their cash investment; but the company was forbidden to pay annual dividends of more than 7 per cent, in view of the fact that earnings had been improperly used to the detriment of the service and maintenance of property, and was ordered to devote any surplus beyond the amount necessary for such dividends to the maintenance of existing property and the betterment of the service. Re Monroe Independent Teleph. Co. (Neb.) 57.

36. A slight increase in the rates of a telephone company was held justified where it appeared that it was not quite earning a return of 7 per cent upon its capital stock, that its business had been conducted with extreme economy, and that the business had reached such a point of development that expenses were sure to increase. Re Monroe Independent Teleph. Co. (Neb.) 57.

e. Toll bridges.

37. A return of 4.6 per cent on the present value on a toll bridge is inadequate where the interest rate on the best security is from 6 to 7 per cent in the vicinity, and the hazard of the bridge investment is great. Gates v. Bridgeport Toll Bridge Co. (Wis.) 602.

f. Water.

38. A proper rate of return on the investment in a waterworks property was found to be 7 per cent on its present value. Re Galveston Waterworks Co. (Ind.) 27.

39. A water company was permitted to so increase its rates that when the change from a flat-rate to a meter-rate system, as ordered, was completed, the return upon its investment under proper management would reasonably be expected to be 8 per cent per annum. Re Hayward Water Co. (Cal.) 834.

REVENUES.

Apportionment of revenues arising from carrying transfer passengers by street railways, see APPORTIONMENT, 16.

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ROUND TRIP TICKETS.

Time and place for sale of, by railway company, see SERVICE, 26.

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ROUTE.

Power of legislature to prescribe the routes of common carrying vehicles upon highways and to delegate such power to municipalities, see LEGISLATURE, 1.

Right to direct the routing of telephone messages or designate which of two competing lines shall be used, see SERVICE, 57.

RULES.

Discrimination in rules requiring security for payment of service, see DISCRIMINATION, 35–37.

Oklahoma rules for conservation of natural gas, see NATURAL GAS, 1.

Oklahoma rules restricting the production of oil from the common source of supply, see OIL, 2.

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Reasonableness of rules requiring a written application and contract for service, see SERVICE, 1.

Practicability of general rule regulating the extension of water mains in new locality, see SERVICE, 9.

Reasonableness of rule requiring consumers to pay cost of extending gas main, to be rebated as additional consumers are connected, see SERVICE, 32.

Duty of water company to enforce rules to avoid waste of water supply, see SERVICE, 79.

SAFETY.

Validity of municipal ordinance requiring operator of jitney bus to have experience in operation of automobiles in the city, see AUTOMOBILES, 7.

Duty of railway to provide for safety of passengers although operating at a loss, see SERVICE, 10, 27.

SALARIES.

Of general manager and superintendent of street railway company to be charged to general and miscellaneous expense, see ACCOUNTING, 6.

Amount paid general manager of street railway company in adjustment of back salary as operating expense, see RETURN, 19.

Allowance for value of services rendered by an officer for which no salary was paid in ascertaining the value of the property, see VALUATION, 40.

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SALE PRICE.

Of securities, see SECURITY ISSUES, 25, 26.

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SALVAGE.

Salvage value to be considered in computing rates of depreciation, see DEPRECIATION, 7.

Treatment of in return, see RETURN, 6.

SECURITY.

Validity of regulation requiring operator of jitney bus to furnish security or indemnity insurance, see AUTOMOBILES, 13–17.

Discrimination in rules requiring security for payment of service, see DISCRIMINATION, 35–37.

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I. In general.

Presumption arising from approval of security issues by Commission, see EVIDENCE, 7.

1. A utility applying for authority to issue bonds to provide funds for constructing a plant in new territory must be treated as a new utility seeking authority to secure its entire capital, where it has sold its entire plant and business in the old territory, and distributed its assets among its stockholders. Re North Yarmouth Water Co. (Me.) 109.

2. The Commission refused to consider an application of a telephone company for permission to issue bonds to provide for the payment of overdue bonds, unmatured bonds, and floating indebtedness, and to provide for extensions, until after the company had made an effort to collect either the difference between the par value and amount paid for stock or amounts from stockholders sufficient to pay the overdue bonds, where a provision of the by-laws requiring stockholders to make such annual payments as will retire outstanding bonds at their maturity has not been enforced, and, by reason of the assets being less than liabilities, there is no equity to secure the proposed bond issue. Re Kennebec Farm & City Teleph. Co. (Me.) 115.

3. Indorsers are not liable as accommodation makers of notes issued by a railroad company which were invalid and unenforceable against

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SECURITY ISSUES—*continued.*
the company because issued without the approval of the Railroad Commission, as such notes were void *ab initio*. Davis v. Watertown Nat. Bank (Tex.) 531.

4. A note by a railroad company, secured by a lien upon its property, and issued without approval of the Railroad Commission, will be declared void without a showing that the Commission had assumed control of the company issuing the notes, where the control over the issuance of securities of railroads by the Commission is not optional with the Commission, the statute declaring it to be the duty of the Commission to ascertain the value of the franchise and property of each railroad in the state for the purpose of regulating and controlling the issuance of indebtedness; authorizing the Commission to approve liens or mortgages that may be given by railroad companies; making it the duty of railroad companies desiring to issue bonds or other indebtedness to be secured by lien on its franchise or property, to procure the consent of the Railroad Commission, and declaring invalid any such indebtness issued without complying with its provisions. Davis v. Watertown Nat. Bank (Tex.) 531.

II. Jurisdiction of Commission.

Burden of proof that railway company issuing securities without approval of Commission was exempt from its control, see EVIDENCE, 11.

5. The New Hampshire Commission, while without power to legalize an illegal issue of stock, may authorize an issue for the purpose of retiring outstanding stock illegally issued. Re Conway Electric Light & P. Co. (N. H.) 931.

III. Character of securities.

6. The New Jersey Commission declined to authorize the issuance of securities for the purpose of a stock dividend except to the extent that the actual value of the property exceeded the present capitalization. Re Raritan River R. Co. (N. J.) 72.

7. Car trust certificates issued by a trustee for the purpose of providing a railroad company with funds to purchase rolling stock are securities, and the issuance thereof is within the provisions of the Public Utilities acts governing the issuance of securities. Re Bangor & A R. Co. (Me.) 119.

IV. Validity of statutes relative to.

8. A statute (chap. 14, art. 6727, vol. 4, Vernon's Sayles's Statutes [Tex.] 1914) declaring invalid every evidence of debt operating as a lien upon the property of a railroad company when unaccompanied by a certificate showing approval of the Railroad Commission of such indebtedness is not unconstitutional as depriving a holder of a note, issued by a railroad company without approval of the Railroad Commission, of his property without due process of law. Davis v. Watertown Nat. Bank (Tex.) 531.

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SECURITY ISSUES—*continued.*

9. A statute (chap. 14, art. 6727, vol. 4, Vernon's Sayles's Statut s [Tex.] 1914) declaring invalid every evidence of debt operating as a lien upon the property of railroad companies when unaccompanied by a certificate showing the approval of the Railroad Commission of such indebtedness is not unconstitutional as being in conflict with article 12, § 6, of the state Constitution, declaring that "no corporation shall issue stocks or bonds except for money paid, labor done, or property actually received." Davis v. Watertown Nat. Bank (Tex.) 531.

V. Purpose.

a. In general.

10. The Elyria Telephone Company was authorized to issue common stock to the par value of $61,000, $54,000 of the par value thereof to be distributed *pro rata* to the holders of the capital stock of the corporation in lieu of moneys previously expended from income for the construction, extension, and improvement of the company's plant and facilities, and the remaining $7,000 to be used for the payment and discharge of the applicant's floating indebtedness incurred in the construction, extension, and improvement of the plant and facilities, such $7,000 of stock to be sold for the highest price obtainable, but for not less than the par value thereof. Re Elyria Teleph. Co. (N. J.) 79.

11. The Commission refused to approve an issue of capital stock by one utility to the amount of $20,000 in payment for the stock of another company of the par value of $12,680, it appearing that the property of the latter company would cost only from $28,000 to $30,000 to rebuild, that it had outstanding stock to the amount of $25,000, and bonds to the amount of $25,000, the statute requiring that all stock shall be issued at par for cash or property. Re Ocean County Gas Co. (N. J.) 76.

12. Securities should not be issued to provide funds to rebuild a warehouse destroyed by an earthquake, since this is not a capital purpose for which stock may ordinarily be issued under the terms of the California Public Utilities act. Re Imperial Grain & Warehouse Co. (Cal.) 636.

13. Upon application for authority to issue capital stock to repay advances made for the acquisition and construction of a railroad from certain quarries to a point of connection with another road, and to provide funds for the completion thereof, an objection having been made that the company was not proceeding in good faith, but merely for the purpose of condemning certain wharfage property, such issue was authorized, provided that none of the stock should be issued until the company should have completed all or a substantial unit of its proposed land, and should have secured from the Commission a supplemental order approving the same and determining the amount thereof, it appearing that, although the road would not pay a return upon the investment for some time, it would be considerable benefit to the quarries interested. Re Castro Point R. & Terminal Co. (Cal.) 632.
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SECURITY ISSUES—*continued.*

b. Betterments.

14. The Manchester Traction Light & Power Company was authorized by the New Hampshire Commission to issue $1,000,000, three-year notes, the proceeds to be used in paying floating indebtedness incurred in making permanent additions and improvements to its plant, and in making further additions and improvements, such notes to bear 5 per cent interest and to be sold at not less than 95 per cent of their par value. Re Manchester Traction Light & P. Co. (N. H.) 356.

15. A railroad company was authorized to issue $100,000 of additional capital stock for cash to be expended for necessary improvements costing $188,000, the balance of the amount to be advanced by the stockholders. Re Raritan River R. Co. (N. J.) 72.

c. Construction and equipment.

16. A railroad company was authorized to issue 5 per cent car trust certificates, to the amount of $85,000 to provide for the purchase of five new locomotives. Re Bangor & A. R. Co. (Me.) 119.

d. Refunding securities.

17. An issuance of securities may be authorized to retire securities issued without the consent of the Commission in payment for undeveloped water power, but this will not be regarded as establishing the value of the water power for rate-making purposes. Re Conway Electric Light & P. Co. (N. H.) 931.

18. A water and electric company was authorized to issue and sell $6,000 of its first mortgage 5 per cent gold bonds, to be sold at 80 per cent of par value with accrued interest, for the purpose of discharging and refunding lawful obligations of the company. Re Franklin Water Light & P. Co. (Ind.) 105.

19. A gas utility was authorized to issue and sell stock to the amount of $70,000 at par, the proceeds to be applied to the payment and cancelation of an equal amount of its promissory notes that were used to pay for extensions, additions, and improvements to its plant and property, on condition that no dividend should be paid in any year in excess of 5 per cent upon its capital stock until the fair structural value of its plant and land should be made equal to the amount of its outstanding stock and debt, by expenditures from income either to reduce the indebtedness or to make additions to the plant. Petition of Marlborough-Hudson Gas Co. (Mass.) 121.

VI. Amount.

a. Value of property covered by.

Valuation for purpose of, to be same as for purpose of taxation, see VALUATION, 3.

20. Securities may be issued to cover the actual cost of pole-line

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SECURITY ISSUES—*continued.*
construction and meters, although a valuation shows a present cost of reproduction new somewhat less than the actual cost. Re Conway Electric Light & P. Co. (N. H.) 931.

21. No more than the cost of property purchased by a utility can be considered as an asset, although it was purchased before the Public Utilities act became operative, where it is capitalized as an asset of a new enterprise. Re North Yarmouth Water Co. (Me.) 109.

22. An application for the issuance of securities upon a proposed consolidation of several gas and electric companies was denied where it appeared that the proposed capitalization was largely in excess of the value of the properties covered thereby, that the proposed capital stock of the consolidated companies was largely in excess of the sum of the capital stock of the various corporations to be merged, that no provision had been made for the payment of such excess in cash, that it was proposed to increase largely the debt of the company, and that the service furnished the public would not be improved thereby. Re Ohio Gas & Electric Co. (Ohio) 82.

23. The Maine Commission authorized a new water utility to issue 5 per cent mortgage bonds to an amount which when sold on not less than a 6 per cent basis would net two thirds of the cost of constructing and equipping its plant, provided that stock costing the holders nothing and representing but small tangible assets should be reduced in amount to not less than one third of the cost of the plant, and provided that sufficient cash should be paid in for the stock to equal, when added to the value of such assets, one third of the cost of the plant. Re North Yarmouth Water Co. (Me.) 109.

b. Proportion of bonds to stock.

24. The Maine Commission will not authorize a new utility to issue bonds unless there is a substantial capital stock margin representing value. Re North Yarmouth Water Co. (Me.) 109.

VII. Sale price.

25. The Massachusetts law requiring that the vote of the Board as to amount of stock reasonably necessary shall be based on the price fixed by the directors, "unless the Board is of the opinion that such price is so low as to be inconsistent with the public interest, in which case it may determine the price at which such shares may be issued," was not intended to change the original purpose of the so-called "anti-stock watering law," requiring the issue of stock at not less than the market value thereof at the time of the increase, "nor to permit the fixing of the price of such new stock materially lower than would insure a ready market for same. Re Salem Electric Lighting Co. (Mass.) 863.

26. The price of $75 per share fixed by the directors of a public service corporation at which a proposed issue of stock shall be offered to stockholders on a par value of $50 a share is so low as to be inconsistent with the public interest, where it appears that the company re-

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SECURITY ISSUES—*continued.*
cently issued stock of the par value of $220,000 at the price of $90 per share, as determined by the directors; that the dividends during the past five years have averaged over 11 per cent; and that the stock of the company is owned by a holding association which will doubtless be the beneficiary of the proposed issue. Re Salem Electric Lighting Co. (Mass.) 863.

SEPARATE COACHES.
For white and colored passengers, see SERVICE, 35.

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the utility and the payment regarded as a loan, to be returned under reasonable conditions and to bear interest at the rate of 6 per cent per annum. Re Water, G. E. & T. Utilities Requiring Deposits (Cal.) 717.

15. In determining whether a water, gas, electric, or telephone utility should make, at its own expense, extensions outside of municipalities to serve applicants, consideration will be given to the fact that the utility should be liberal, but regard must also be had to its financial condition and the rights of existing consumers. Re Water, G. E. & T. Utilities Requiring Deposits (Cal.) 717.

16. A water, gas, electric, or telephone utility may be required to make extensions in unincorporated territory at its own expense, as it can agree upon with the applicant for service, provided that where it deems an extension unduly burdensome the matter may be referred to the Commission for adjustment. Re Water, G. E. & T. Utilities Requiring Deposits (Cal.) 717.

17. A water, gas, electric, or telephone utility which operates under a general franchise authorizing the occupancy of all streets of a municipality may be required to make, at its own expense, such street extensions as may be necessary to serve applicants, provided that where it deems an extension unduly burdensome, the matter may be referred to the Commission for adjustment. Re Water, G. E. & T. Utilities Requiring Deposits (Cal.) 717.

18. It is a reasonable requirement that utilities should make, at their own expense, all service connection of normal size from their mains or lines along public highways to the property lines of abutting consumers, except that connection may be refused, subject to review by the Commission, if the utility believes that such extensions will not be used in the reasonably immediate future. Re Water, G. E. & T. Utilities Requiring Deposits (Cal.) 717.

19. The corporate authorities of a town are clearly within their rights in ordering a water company to place and erect lights and hydrants, and construct an extension of its services within territory wholly within the corporate limits of the town, where the franchise under which the utility is operated requires it to place lights and hydrants at such places as may be designated by the corporate authorities. Marlinton v. Marlinton Service Co. (W. Va.) 277.

20. A water company was ordered to make certain extensions in order to supply prospective customers with water connections, where it appeared that the added income from the use of such service would amount to a return of from 30 to 36 per cent on the necessary investment. Public Service Commission v. Water Co. (Nev.) 240.

21. A water company which is unable to supply an adequate quantity of water to another company to which it has contracted to deliver water at wholesale will not be ordered to extend its system into the territory of the distributing company, where the supply of water does not justify the extension of its system to territory nearer at hand, and where there would be no just reason for granting the extension in the one case and denying it in the other. Frank Turnbull Co. v. Sweetwater Water Co. (Cal.) 629.

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V. Abandonment of service.

22. Where a telegraph company maintained a telegraph station for a number of years at an average deficit of $134.33 per annum, it should have applied to the Public Utilities Commission for permission to discontinue it, and it was unlawful to close the station and quit business thereat until such permission was granted. State ex rel. Caster v. Kansas Postal-Teleg. Cable Co. (Kan.) 222.

23. The abandonment of a particular line of a street railway should not be permitted, merely because for the time being it is conducted at a loss. Re Empire United R. Co. (N. Y.) 263.

VI. Discrimination.

As to discrimination in service, see DISCRIMINATION, II.

VII. Service of particular utilities.

a. Electricity.

24. A city operating an electric plant and furnishing light as a public utility was ordered to make certain specified changes in its plant in order to render proper service, it being found that the service afforded by the existing plant was unreasonable, insufficient, and inadequate. Purviance v. Attica (Ind.) 339.

b. Interurban railways.

1. Place and time for sale of tickets.

25. A cigar store is not a suitable place to require the traveling public to enter in order to purchase railway tickets. Beauleiu v. Missoula Street R. Co. (Mont.) 347.

26. An interurban railway company which offers round-trip tickets at a reduced rate found to be reasonable was ordered to keep such tickets on sale at suitable places during the fifteen-minute interval prior to the departure of each car. Beauleiu v. Missoula Street R. Co. (Mont.) 347.

2. Car operators.

27. The Montana Commission refused to order an interurban railway which was operated at a loss to operate its cars in charge of a conductor as well as of a motorman, so as to protect passengers from drunken and disorderly men riding on the cars, since the Commission was of the opinion that the situation could be properly taken care of by the motorman under orders from the company, with the aid of passengers in extreme cases. Beauleiu v. Missoula Street R. Co. (Mont.) 347.

3. Car steps.

28. In determining that lower steps of interurban cars should not

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be more than 15 inches from the top of the rail, the Commission stated that intermediate steps should not exceed 14 inches in height. Social Service Club v. Portland R. Light & P. Co. (Or.) 701.

29. Lower steps of interurban cars which exceed 15 inches in height above the top of the rail are unreasonably high, but the carrier was required only to remodel equipment so that steps would have a clearance of 16½ inches, where such clearance was required by the construction of a public bridge. Social Service Club v. Portland R. Light & P. Co. (Or.) 701.

4. Station platforms.

30. Interurban station platforms give inadequate service where they are not level with the top of the rail but slope rapidly down so that the normal elevation of car steps is increased from 16½ inches to 24 inches at the stations. Social Service Club v. Portland R. Light & P. Co. (Or.) 701.

5. Stops.

31. Interurban cars, when substituted without notice for suburban car service, on the schedule of a railroad company, were required to make all stops designated for both. Milwaukee Light, Heat & Traction Co. v. Cudahy (Wis.) 893.

c. Gas.

32. A rule of a gas utility requiring new consumers to pay for the cost of extending the gas main in excess of a distance of 300 feet per consumer, which is rebated as additional consumers are connected to the extension, was held reasonable and equitable as applied to a village containing scattered residences. Creutz v. Western United Gas & Electric Co. (Ill.) 902.

d. Railroads.

1. In general.

Fines for violation of order to operate passenger train considered necessary for public convenience, see FINES AND PENALTIES, 2.
Injunction as proper remedy to restrain enforcement of order directing operation of trains, see INJUNCTION, 1.

33. An order of the Railroad Commission requiring the operation of one train for passengers and freight each way daily over a railroad 9 miles in length is arbitrary and unreasonable, where the railroad runs through a sparsely settled country, the receipts from such service costing $50 per day will not amount to $10 per day, it will cost a large sum to make the track safe for passengers, the company is heavily in debt, and is unable to procure any funds to operate its road, and the lack of means is not the result of mismanagement. Rowland v. Saline River R. Co. (Ark.) 191.

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34. A railroad company will not be required to operate a train to meet the special requirements of shippers of perishable farm products, where it does not appear that sufficient freight will be regularly offered to give reasonable assurance of operation without loss, and the shippers are unwilling to guarantee sufficient shipments to yield a reasonable return at the regular rates or to assume responsibility for the operation of the train as a special in event of light shipment. Farmers' Transp. Asso. v. Pennsylvania R. Co. (N. J.) 242.

35. Railroad companies operating in Louisiana are required to furnish separate coaches, or coaches containing separate compartments for white and colored passengers; except that colored prisoners in charge of white officers, and colored nurses or maids traveling with white children or ladies, are permitted to travel in coaches or compartments provided for white passengers. Re Separate Compartments (La.) 32.

2. Stopping of interstate trains.

36. The stopping of a passenger train only in the morning was held inadequate service and insufficient for the public convenience of the inhabitants of a village of 300 situated in the midst of a populous community, and the railroad company was required also to stop an interstate passenger train at night at the village, it appearing that such service had been maintained for many years until recently, and that it could be rendered at slight cost and with little interference with the through schedule or interstate traffic. Reid v. Chicago, R. I. & P. R. Co. (Mo.) 906.

37. The Missouri Commission in ordering that an interstate passenger train stop at a particular station will not consider the possible effect upon interstate traffic of other stations, as a result of the order, securing stops, until the advisability of making such stops is presented to the Commission for determination. Reid v. Chicago, R. I. & P. R. Co. (Mo.) 906.

3. Station agents.

38. The maintenance of a night station agent at a village of 300 inhabitants was held necessary for the proper accommodation of the public using night trains. Reid v. Chicago, R. I. & P. R. Co. (Mo.) 906.

4. Switching.

39. Movements of freight between points within switching limits in cities or at terminals constitute transportation, where the shipment begins and ends within such districts, and is not preceded or followed by a transportation service for which freight charges are assessed, and such movements will be treated as transportation movements between separate shipping points. Railroad Commission v. Railroads (La.) 33. P.U.R.1915E.

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e. Street railways.

1. In general.

40. Street railways should not be refused relief from burdensome speed and stop regulations for the purpose of bettering their service, on the ground that the cars are delayed by complicated fare-zone tickets and pay-as-you-enter cars, since the companies should not be refused permission to improve their service in one respect for the reason that other improvements might be made in the method of operation. Milwaukee Light, Heat & Traction Co. v. Cudahy (Wis.) 893.

41. A street railway company was authorized to reduce its fare zones on a branch line from two to one, and to abolish the privilege of transferring to the main line, where the reduction in zones offset the loss of transfers. Re Norfolk & B. Street R. Co. (Mass.) 411.

42. The fact that a Commission has the power to regulate the service of a street railway company, notwithstanding the existence of a franchise requiring a certain number of cars to be run on a street railway, does not justify the company in ignoring the contract obligation and pleading the public or its own convenience as an excuse for nonperformance; and the company should therefore perform its contract obligations until relieved therefrom by competent authority. Monroe v. Detroit, M. & T. Short Line R. Co. (Mich.) 235.

43. Compliance with an order requiring a necessary extension to a street railway line was deferred about ten months on account of the decreased revenues of the utility and of the general business depression, the company agreeing meanwhile to maintain a bus service sufficient and adequate to meet all reasonable needs of the traffic, and to operate the same without extra charge to passengers either going from or coming towards the city. Lyman v. United R. & Electric Co. (Md.) 39.

2. Speed restrictions.

44. A requirement in a city ordinance that cars shall not exceed a speed of 4 miles per hour on a bridge and within 100 feet of either end thereof was held reasonable on account of the restrictive area available for traffic thereon, but a requirement that the speed should not exceed 6 miles per hour in a certain portion of one city, and a requirement that the speed should not exceed 15 miles per hour in another city, were held unreasonable; and a limit of 20 miles per hour was allowed. Milwaukee Light, Heat & Traction Co. v. Cudahy (Wis.) 893.

45. The fact that an ordinance limiting the operation of automobiles in a city to a certain speed is reasonable does not make an ordinance limiting the operation of street cars to the same speed reasonable, since conditions of operation are entirely different. Milwaukee Light, Heat & Traction Co. v. Cudahy (Wis.) 893.

3. Stops.

46. A street railway was permitted to eliminate certain unnecessary

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stops required by a city ordinance upon the erection of suitable signs at all street intersections where cars do not stop and at all points where stops are made in exception to the provisions of an ordinance requiring far-side stops. Milwaukee Electric R. & Light Co. v. Milwaukee (Wis.) 884.

47. In order to facilitate the movement of traffic, cars passing over a fire crossing at which they are required to stop were permitted to substitute such place as a regular stopping place for passengers, although the original stop nearby would better serve the neighborhood. Milwaukee Light, Heat & Traction Co. v. Cudahy (Wis.) 893.

48. The petition of a street railway company to eliminate certain stops required by a city ordinance, for the sole purpose of reducing running time, but not intended by the company to give to its patrons the benefit of the decrease in headway caused thereby, and the consequent greater seating capacity, was denied except as to a number of clearly unreasonable stops. Milwaukee Electric R. & Light Co. v. Milwaukee (Wis.) 884.

f. Taxicabs.

49. All public utilities furnishing taxicab service in the District of Columbia are required to conform to regulations for the testing and use of taximeters adopted by the Commission and made effective after September 1, 1915, except that, on application to the Commission and for sufficient cause shown, such modifications and extensions may be made with reference to such regulations as the facts in each case may warrant. Re Regulations of Taximeters (D. C.) 305.

g. Telegraphs.

50. The mere fact that a contract by which telegraph companies buy from the New York Stock Exchange the right to furnish stock quotations at retail to subscribers in a city contains a provision giving the exchange the right of approval of applicants for such service, in order to prevent an improper and unlawful use thereof, does not, in the absence of evidence of such unlawful purpose, justify the companies in refusing service to one who has failed to obtain the approval of the exchange. Stock Ticker Case (Mass.) 1068.

51. A petition for stock quotation service from telegraph companies by one who has been refused such service because the New York Stock Exchange has not approved his application to the telegraph companies therefor under the terms of a contract between the companies and the exchange reserving such right of approval to the latter, in order to prevent the unlawful or improper use of quotations, will not, in the absence of evidence that the quotations are desired for an unlawful purpose, be denied on the mere assumption that the exchange in disapproving such application acted in good faith. Stock Ticker Case (Mass.) 1068.

52. Section 1796 of the General Statutes of 1909 (Laws 1893, chap. 152, § 1) requiring each telegraph company to maintain an office in

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the county seat of each county when its lines run through such county seat is largely superseded by the Public Utilities act and other related statutes enacted since 1893. State ex rel. Caster v. Kansas Postal-Teleg.-Cable Co. (Kan.) 222.

h. Telephones.

1. In general.

Compliance with order requiring discontinuance of telephone service on a competing line, see MONOPOLY AND COMPETITION, 1.

53. The toll business of a telephone company should not be allowed to become a burden to the exchange, and if it is found that it is, sufficient operators should be employed so that all traffic can be handled promptly and efficiently. Re Crownover Teleph. Co. (Neb.) 571.

2. Farm lines.

54. A telephone company switching farm lines cannot be held responsible for poor service due to the unusual length of the lines, and the number of subscribers thereon, and to the lack of uniformity in the type of telephone instruments in use on such lines. Re Crownover Teleph. Co. (Neb.) 571.

55. A telephone company which is unable to reduce the length of its farm lines should make an effort to reduce the number of subscribers thereon, where a complaint as to the quality of the service rendered is largely due to the length of the lines and the number of subscribers thereon. Re Crownover Teleph. Co. (Neb.) 571.

3. Physical connection.

(a) In general.

56. Physical connection between the lines of two telephone companies was ordered as a temporary arrangement pending an application for a certificate of convenience and necessity to authorize one company to establish a competing service in territory occupied by the other, where it appeared that intercommunication between the subscribers of the two companies was essential to the users of both. Wayne County Mut. Teleph. Co. v. Commercial Teleph. & Teleg. Co. (Ill.) 673.

57. The privilege of directing the routing of the message, or designating which of two competing lines shall be used, where two or more telephone companies maintain physical connections for the transmission of messages, should be accorded to the exchange originating the call, having regard for the quick despatch of the message and the least inconvenience to the calling party, and not the exchange terminating the call or the party calling; but this privilege is to be accorded only so long as it appears to be a just and rational policy. Comanche Teleph. Co. v. Pioneer Teleph. & Teleg. Co. (Okla.) 695.

58. The Pennsylvania Commission refused to order physical connection between the lines of two telephone companies to the exchange P.U.R.1915E.

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of a third company, where it appeared that the objecting company had connection with the locality served by the complainant through the lines of a fourth company, and there was no evidence that the latter connection could not afford adequate service to the locality served by the complainant, and the only evidence that public necessity for the new connection existed was a petition asking therefor by a number of subscribers of complainants, and the fact that such connection would be more convenient. Blairsville Teleph. Co. v. Johnstown Teleph. Co. (Pa.) 933.

59. The right of priority of a telephone company to advantages accruing to it by reason of its connection with a long-distance line will be protected, and where public necessity and convenience demand that the lines of another company be connected with the long-distance line through the switch board and lines of the original company, and it appears that no injury would thereby result to either service, such connection may be ordered and the original company allowed to impose a charge for its service over the usual toll rate by the long-distance company in an amount sufficient to save it from injury. Assumption Mut. Teleph. Co. v. Central U. Teleph. Co. (Ill.) 940.

60. In determining whether physical connection between the lines of two telephone companies shall be made through the exchange of a company competing with applicant, or through the exchange of a fourth company, some consideration should be given to the fact that certain messages would reach their destination by a more direct route and with less switching if connection were made through the exchange of the fourth company than if made through the exchange of the competing company; but this factor is not controlling where it appears that connection by the more direct route would injure the business of the competing company, that only 25 per cent of the toll business would be affected, and in the absence of evidence that the connection by the longer route is not practicable. Farmers' Mut. Teleph. Co. v. Central Union Teleph. Co. (Ill.) 13.

61. Physical connection between the lines of two telephone companies was ordered to be made through the exchange of a competing company rather than through the exchange of a company located at another place, such connection to be made at the cost of the complainant and on such terms as to prevent loss of business to the competing company, where it appears that such connection was the only practicable manner of providing adequate toll facilities for the complainant. Farmers' Mut. Teleph. Co. v. Central Union Teleph. Co. (Ill.) 13.

62. Public convenience and necessity were held not to demand a physical connection between the lines of two telephone companies, where a petition for the connection was signed by only a small minority of subscribers of each company after the majority had been importuned to sign, and where it also appeared that the moving ground of the complainant was not to obtain an interchange of local service, but to obtain the free service of its competitor under a reciprocal arrangement which would not be fair to the latter and would result in its lines being made use of at little or no cost to the complainant. Waynesville Teleph. Exch. v. National Teleph. & Electric Co. (Ill.) 496.

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63. A telephone company cannot refuse to make a physical connection with the lines of another company for the reason that such lines are grounded, and are not constructed in a manner capable of rendering good service, where the lines are no different than those of other rural companies with which the objector has established connection. Waynesville Teleph. Exch. v. National Teleph. & Electric Co. (Ill.) 496.

64. A telephone company was refused authority to make a physical connection with the lines of a local competitor, which charged higher rates, at a place where they both operated exchanges, and with a third company having connection with the competitor by means of a toll line, where an interchange of local calls on a reciprocal free basis would result in subscribers of the competitor seeking the cheaper service of the applicant, and if a protective rate were applied there would be no intercompany calls; and where the applicant, by means of its trunk-line connections at a number of points, had access to the toll systems of the competitor, the third company and also a fourth company serving extensive territory. Waynesville Teleph. Exch. v. National Teleph. & Electric Co. (Ill.) 496.

(b) Construction of statutes.

65. The definition of the term "localities" as used in the Public Service Company law with reference to physical connection between the lines of telephone companies must be determined by the particular circumstances of each case. Blairsville Teleph. Co. v. Johnstown Teleph. Co. (Pa.) 933.

66. In order to enable the Pennsylvania Commission to act under the provisions of the Public Service Company law with reference to physical connection between the lines of telephone companies, it must be established: (1) That neither one of the companies has lines or facilities for connections which communicate with or reach both of the localities; and (2) that the two companies have lines which either form, or can be connected so as to form, a continuous line between the two localities; and that if there is already communication by direct single line or joint continuous line of company or companies, there should appear from the evidence that public necessity existed for the linking of the two new companies whose lines are continuous when joined together, and neither of which reaches both localities by its own line or its facilities or connections. Blairsville Teleph. Co. v. Johnstown Teleph. Co. (Pa.) 933.

4. Water.

1. In general.

67. Water which has been shut off by the utility should not be turned on except by the utility or by its direction. Public Service Commission v. Water Utilities (Mont.) 866.

68. A water utility in supplying service to a new consumer must, at its own expense, tap the street main and furnish the standard connections, the consumer to pay at cost for any other material used or

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labor furnished in connection with the installation of the service pipe or curb box to his property line. Public Service Commission v. Water Utilities (Mont.) 866.

69. Water utilities were not required to install and maintain, at their own expense, service pipes from the main line on streets to the property line of the consumers, where, in the absence of a physical valuation of the utilities, it appeared that the necessary capitalization of such expense to the utilities would be more harmful to consumers than if they made the extension at their own expense. Public Service Commission v. Water Utilities (Mont.) 866.

70. A water company which has merely contracted to deliver water in wholesale quantities to the pipes of another company will not be compelled, at considerable expense by way of pumping or other device, to furnish the latter company a better service than is provided for direct consumers on other parts of its own system. Frank Turnbull Co. v. Sweetwater Water Co. (Cal.) 629.

2. Ownership of meters.

71. A municipal water company was exempted from the provision of a statute which required utilities to provide their own meters, where it was shown that owners of property were in a better position to protect meters than the companies; that an unusually large percentage of the population were renters; that the expense of making the change would be large, and that the company needed its funds for necessary additions to its mains. Re Platteville Municipal Waterworks (Wis.) 705.

72. Upon granting an increase in rates for water to conform to rates fixed by the Commission for the company in another city, it was ordered that all meters be paid for and set up at the expense of the company, and all extensions be made at its expense as provided in the other city. Re San Jose Water Co. (Cal.) 706.

73. It is desirable that a water utility, charging for water according to a meter-rate schedule, should own the meters, since divided ownership of equipment of such a utility does not result in the most effective service. Re Light & Water Commission (Wis.) 539.

74. Water utilities adopting the meter system must provide, install, and maintain the meters at their own expense, except that consumers may be required to provide meter boxes at special locations, and also to pay for any unusual piping. Public Service Commission v. Water Utilities (Mont.) 866.

75. Water utilities adopting the meter system that are financially unable to acquire meters owned by consumers were permitted to purchase such meters at a *pro rata* value, paying for them in instalments limited to a reasonable time, and refunding to the consumers by means of a percentage allowance on monthly or quarterly bills for water consumed. Public Service Commission v. Water Utilities (Mont.) 866.

76. Water consumers desiring meters installed, which utilities are financially unable to purchase, were permitted to purchase meters through the utilities, which were required to install the meters at their

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SERVICE—continued.
own expense and to refund the purchase price by means of a percentage allowance on monthly or quarterly bills, allowing interest to consumers at the rate of 6 per cent per annum. Public Service Commission v. Water Utilities (Mont.) 866.

3. Discontinuance of service.

77. A water utility may shut off water from consumers who habitually furnish water to nonsubscribers. Public Service Commission v. Water Utilities (Mont.) 866.

78. A utility must give notice to a consumer before shutting off his water supply, except in case of an emergency. Public Service Commission v. Water Utilities (Mont.) 866.

4. Waste or diversion of supply.

79. It is the duty of a water company furnishing the inhabitants of a municipality with water to enforce the rules governing the use of water to avoid waste of the water supply. McCammon v. Harkness (Idaho) 558.

80. It is the duty of the consumers to comply with the rules governing the use of the water supply to the end that a sufficient water supply may be preserved for all purposes. McCammon v. Harkness (Idaho) 558.

81. As it is the duty of a water company undertaking to furnish a municipality and its inhabitants with water to furnish a sufficient quantity adequately to provide for the needs of the municipality and its inhabitants, it will be enjoined from diverting the water and applying it for irrigation or any other purpose when it interferes with the supply necessary for the needs of the municipality and its inhabitants. McCammon v. Harkness (Idaho) 558.

5. Fire protection.

82. A water company furnishing a village water for fire protection must provide pipes of ample size leading from the source of supply to the main reservoir to furnish sufficient pressure for fire protection at all times. McCammon v. Harkness (Idaho) 558.

83. A water company furnishing a village with water for fire protection should make arrangements for carrying off the surplus water at the reservoir when it becomes full, to avoid the necessity of opening the fire plugs in the village or the shutting off of the intake at the reservoir, when it can be remedied by the expenditure of a small amount which will greatly increase the efficiency of the plant. McCammon v. Harkness (Idaho) 558.

SERVICE CONNECTIONS.

See also PHYSICAL CONNECTION.

Right of utility to assess the the initial cost of, against the consumer, see RETURN, 16.

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SERVICE CONNECTIONS—*continued.*
Cost of disconnections and reconnections at season resorts, see SERVICE, 2.
Duty of water utility to furnish, at its own expense, see SERVICE, 18, 68, 69.
Consideration of unused service connections of a water company in valuation, see VALUATION, 22.

SERVICES.
Allowance for the value of services rendered by an officer for which no salary was paid in estimating the value of the property, see VALUATION, 40.

SHORT HAUL.
See LONG AND SHORT HAUL.

SIGNS.
Duty to provide signs to indicate stops for street cars, see SERVICE, 46.

SINKING FUND.
As an equivalent of depreciation fund, see DEPRECIATION, 3.

SISTER STATE.
Adoption of rates established by Commission of, see RATES, 16.

SMALL CONSUMERS.
Effect of franchise fixing rates upon establishment of minimum charge for, see RATES, 21.
Minimum charge for water, see RATES, 43, 44.

SPEED RESTRICTIONS.
Reasonableness of regulations restricting speed of street cars, see SERVICE, 44, 45.

STANDARDS.
Of quality of natural gas, see RATES, 23.
Of valuation, see VALUATION, 3.

STATION.
Height of platform, see SERVICE, 30.
Duty of maintaining night station agent in village of 300 inhabitants, see SERVICE, 38.

STATUTES.
Apportionment of cost of strengthening bridge between municipality and street railway company using it, see APPORTIONMENT, 8.
Ordinance restricting the number of jitney busses to be operated as obnoxious to statutory provisions against monopolies, see AUTOMOBILES, 9.
Authorizing building of bridges, construction of, see BRIDGES, 2.

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STATUTES—*continued.*

Power of Commission to repeal or declare unconstitutional a statute forbidding discrimination in telephone rates, see COMMISSIONS, 6.

Validity of statute authorizing Commission to determine number of tracks to be laid by a street railway company operating upon a city bridge, see CONSTITUTIONAL LAW, 1.

Forbidding discrimination in telephone rates as impairing obligation of contract guarantying free service to stockholders, see CONSTITUTIONAL LAW, 6.

Construction of statute delegating power to regulate rates, see CONSTITUTIONAL LAW, 12.

Authority to give reduced rates under Maine statute, see DISCRIMINATION, 12.

Application of provision that the lowest rate published or charged for the same kind of service shall be prima facie evidence of a reasonable rate where rates are influenced by competitive conditions, see EVIDENCE, 4.

Validity of statute declaring invalid evidences of indebtedness when unaccompanied by certificate showing approval by Commission, see SECURITY ISSUES, 8, 9.

Validity of statute authorizing Commission to determine whether telegraph station should be abandoned, see SERVICE, 6.

Requiring maintenance of telegraph station at county seat, superseded by Public Utilities act, see SERVICE, 52.

Construction of statutes relative to physical connection of telephones, see SERVICE, 65, 66.

Exemption of municipal plant from provisions of statute requiring utilities to provide their own meters, see SERVICE, 71.

STEAM HEATING.

See HEATING.

STEPS.

Height of, on interurban cars, see SERVICE, 28, 29.

STOCK.

Issuance of, see SECURITY ISSUES.

Proportion of bonds to, see SECURITY ISSUES, 24.

STOCK BUYERS.

Rates charged, over toll bridge, see DISCRIMINATION, 11.

STOCK DIVIDENDS.

See SECURITY ISSUES, 6.

STOCKHOLDERS.

Statute forbidding discrimination in telephone rates as impairing obligation of contract guarantying free service to stockholders, see CONSTITUTIONAL LAW, 6.

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STOCKHOLDERS—*continued.*
Validity and enforceability of contract to provide free telephone service to stockholders, see CONTRACTS, 2, 3.
Free service to, as discrimination, see DISCRIMINATION, 20–23.
Presumption of authority to abrogate contract for free service to, see EVIDENCE, 5.
Ownership of property in utility not in stockholders, see PUBLIC UTILITY, 1.

STOCK QUOTATION SERVICE.
Jurisdiction of state Commission to remove discrimination in, see COMMERCE, 1.
Discrimination in, see DISCRIMINATION, 30.
As public service, see PUBLIC UTILITIES, 3.
Jurisdiction of Commission to compel telegraph companies to furnish, from another state, see SERVICE, 4.
See also SERVICE, 51.

STOCK VALUE.
To be considered in computing rates of depreciation, see DEPRECIATION, 7.

STOPS.
Validity of municipal ordinance requiring cars to stop at all corners, see SERVICE, 3.
Interurban cars substituted without notice for suburban cars required to make all stops required for either, see SERVICE, 31.
Regulation of stops for street cars, see SERVICE, 46–48.

STORAGE WAREHOUSE.
Sale of property and franchise used in storage warehouse and general merchandise business authorized, see CONSOLIDATION, MERGER, AND SALE, 3.

STREET LIGHTING.
Reduced rates for, see DISCRIMINATION, 25–27.
Reasonableness of rates for, see RATES, 20.

STREET RAILWAYS.
Mode of accounting by, see ACCOUNTING, 5, 6, 8.
Interference by court of order relative to the number of tracks and the kind of rails to be used on a bridge used jointly by a city and a street railway company, see APPEAL AND REVIEW, 2.
Apportionment of expenses of, carrying on joint enterprise, see APPORTIONMENT, 4.
Apportionment of cost of bridge between municipality and street railway company using bridge, see APPORTIONMENT, 8–14.
Apportionment of revenues arising from carrying transfer passengers, see APPORTIONMENT, 16.
Validity of statute authorizing Commission to determine number of

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STREET RAILWAYS—*continued.*

tracks to be laid by a street railway company operating a line upon a city bridge, see CONSTITUTIONAL LAW, 1.

Effect of contract between city and street railway company upon the right of the Commission to regulate bridges erected by the city upon which street cars are operated, see CONSTITUTIONAL LAW, 9.

Effect of restriction in rates in franchise, upon the right of the Commission to regulate rates, see CONSTITUTIONAL LAW, 10.

Delegation of power to Commission to determine the number of street railway tracks to be laid on a city bridge, see CONSTITUTIONAL LAW, 14.

Amount expended from surplus earnings for additions and improvements as equivalent to depreciation reserve fund, see DEPRECIATION, 3.

Amount necessary for reserve fund, see DEPRECIATION, 4.

Discrimination in rates, see DISCRIMINATION, 1.

Discrimination against short haul, see DISCRIMINATION, 7–9.

Necessity that arrangement between connecting street railway companies whereby one furnishes operating officials for the other be upon a definite cash basis, see INTERCORPORATE RELATIONS.

Rates for, see RATES, 8, 32, 33.

Amount allowed for return, see RETURN, 28, 29.

Amount allowed for operating expenses, see RETURN, 19.

Service, by generally, see SERVICE, 40–48.

Right to abandon a particular line, operated at a loss, see SERVICE, 23.

Valuation of, see VALUATION, 2, 6, 7, 26.

1. The number of automobiles purchased by a street railway company should be carefully restricted to the needs of the service, in view of the fact that automobile depreciation is very rapid and maintenance changes are large. Re Norfolk & B. Street R. Co. (Mass.) 411.

STREETS.

See also HIGHWAYS.

Delegation to Public Service Commission authority to determine number of street railway tracks to be laid on public bridge, see CONSTITUTIONAL LAW, 14.

Franchise ordinance requiring gas company to furnish free service to city in consideration of use of streets as interference with power of Commission to fix rates, see CONSTITUTIONAL LAW, 5.

SUPERINTENDENT.

Salary of superintendent of street railway company to be charged to general and miscellaneous expense, see ACCOUNTING, 6.

SURETIES.

Validity of regulation requiring owners of jitney busses to file bond of surety company to the exclusion of personal sureties, see AUTOMOBILES, 15, 17.

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SURPLUS.

Amount expended out of surplus earnings for additions and improvements as equivalent to depreciation reserve fund, see DEPRECIATION, 3.

SWITCHING RATES.

See RATES, 30.

SWITCHING SERVICE.

See SERVICE, 39.

TAPPING MAINS.

Right of water utility to make charge for tapping street mains for new consumer, see SERVICE, 68.

TAPS.

Water rates for additional taps, see RATES, 42.

TAXES.

Basis of apportionment of the taxes assessed against the property of a natural gas company supplying several communities, see APPORTIONMENT, 2.

Apportionment of expenses of utility carrying on joint enterprise, see APPORTIONMENT, 4.

Apportionment of taxes between the different departments of utility, see APPORTIONMENT, 4.

License fee for operation of automobiles as jitney bus as occupation tax, see AUTOMOBILES, 8, 11.

Valuation for purposes of taxation the same as for issuance of securities, see VALUATION, 3.

Value for taxation as measure of value, see VALUATION, 18, 19.

Allowance of one half amount paid for, in valuation, see VALUATION, 33.

TAXICABS.

See also AUTOMOBILES.

Amount allowed company for depreciation, see DEPRECIATION, 10–12.

Service by, see SERVICE, 49.

Valuation of property of company, see VALUATION, 29–34, 37, 40.

TELEGRAM.

Payment for service by telephone companies in forwarding telegram, see PAYMENT, 11.

TELEGRAPHS.

Jurisdiction of state Commission to remove discrimination in stock quotation service in the absence of action by Congress or the Interstate Commerce Commission, see COMMERCE, 1.

Discrimination in stock quotation service, see DISCRIMINATION, 30.

Furnishing stock ticker quotations as a public service, see PUBLIC UTILITIES, 3.

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TELEGRAPHS—*continued.*

Jurisdiction of Commission to compel telegraph company to furnish stock quotations from another state, see SERVICE, 4.

Jurisdiction of Commission to determine whether telegraph station should be abandoned, see SERVICE, 5–7.

Right to abandon station maintained at a loss, see SERVICE, 22.

TELEPHONES.

Toll and exchange service to be kept separate in accounts, see ACCOUNTING, 9.

Station basis as method of division of central office telephone expenses, see APPORTIONMENT, 1.

Apportionment of value of city and rural lines in determining reasonableness of rates, see APPORTIONMENT, 6.

Power of Commission to repeal or to declare unconstitutional a statute forbidding discrimination in telephone rates, see COMMISSIONS, 6.

Statute forbidding discrimination in telephone rates as impairing obligation of contract guarantying free service to stockholders, see CONSTITUTIONAL LAW, 6.

Validity and enforceability of contracts to provide free service to stockholders, see CONTRACTS, 2, 3.

Basis for estimating depreciation, see DEPRECIATION, 6, 7.

Amount allowed for depreciation, see DEPRECIATION, 9, 16–20.

Discrimination in rates, see DISCRIMINATION, 3–5, 13–15, 20–22, 24.

Refusal to afford physical connection as discrimination, see DISCRIMINATION, 32.

Presumption of authority to abrogate contract for free service, see EVIDENCE, 5.

Right to permit use of property by other utilities, see LICENSES, 1.

Sufficiency of compliance with order requiring the discontinuance of telephone service on a competing line, see MONOPOLY AND COMPETITION, 1.

Authorizing consolidation of telephone companies notwithstanding agreement not to purchase competing company's property, see MONOPOLY AND COMPETITION, 2.

Admission into occupied field, see MONOPOLY AND COMPETITION, 6–8.

Payment for service by, see PAYMENT, 3, 4, 6, 7, 9, 11.

Validity of municipal ordinance regulating telephone rates, see RATES, 2.

Rates for, see RATES, 34–40.

Telephone company directed to provide for additions and betterments to its property out of capital secured through sale of stocks, see RETURN, 2.

Return of, see RETURN, 14, 17, 22, 23, 30–36.

Security issues, see SECURITY ISSUES, 2, 10.

Service by, see SERVICE, 53–66.

Valuation of plant, see VALUATION, 5, 8, 9, 11, 13, 16, 20, 25, 27, 35, 38.

1. A telephone company which has obtained a franchise from a

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TELEPHONES—*continued.*
municipality before the effective date of a statute providing that any telephone company operating under any existing license, permit, or franchise, or which shall hereafter, before the taking effect of the act, acquire such license, permit, or franchise, may surrender the same for an indeterminate permit, is not required to obtain the consent of the Commission before being permitted to construct and operate an exchange thereunder. Re Northwestern Teleph. Exch. Co. (Minn.) 344.

TERMINAL RAILROADS.
Right to have joint rate with railroads with which it connects, see CARRIERS, 1.

TEST.
Of the jurisdiction of the Commission, see COMMISSION, 1.
For determining the value of real estate on which the plant is located in valuation proceedings, see VALUATION, 28.

TESTING.
Electric rates for testing lamps, see RATES, 18.

TICKET BOOKS.
Sale of, by street railway, see DISCRIMINATION, 2.
Power of Commission to permit charges for mileage book exceeding maximum statutory limit, see RATES, 5.

TICKETS.
Time and place for sale of, see SERVICE, 25, 26.

TIME.
For making order after final submission for decision on rehearing, see ORDERS, 1.

TITLE.
To extensions paid for by consumers, see SERVICE, 14.

TOLL BRIDGE.
See BRIDGES.

TOLL SERVICE.
Toll and exchange telephone service to be kept in separate accounts, see ACCOUNTING, 9.
Not to become a burden on telephone exchange so as to interfere with other business, see SERVICE, 53.

TOOLS.
Allowance in valuation proceedings of tools used during construction of rural telephone plant, see VALUATION, 27.

TORNADO INSURANCE.
Cost of tornado insurance as operating expense, see RETURN, 23.

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TRACKS.
Delegation of power to Commission to determine the number of street railway tracks to be laid on a city bridge, see CONSTITUTIONAL LAW, 14.

TRAFFIC STUDY.
Of toll bridges, see BRIDGES, 1.

TRAINING.
Validity of municipal ordinance requiring operator of jitney bus to have experience in the operation of an automobile in the city, see AUTOMOBILES, 7.

TRANSFER PRIVILEGES.
Giving entire fare receipts from transfer passengers to one of two street railways operating jointly, see APPORTIONMENT, 16.
Free transfers on street railways, see RATES, 32, 33.
Abolition of street railway transfers upon reduction of fares, see SERVICE, 41.

TRANSMISSION LINE.
Method of apportioning values in gas and transmission lines, see APPORTIONMENT, 7.

TURNING ON AND OFF.
Charge for turning on water, see RATES, 52.
Who may turn on water shut off by utility, see SERVICE, 67.
See also DISCONTINUANCE OF SERVICE.

UNIFORMITY OF ACCOUNTING.
Right to increase rates to secure uniformity in accounting, see ACCOUNTING, 3.

UNREASONABLE.
See REASONABLENESS.

UNUSED PROPERTY.
Valuation of property not useful in public service, see VALUATION, 22–27.

UTILITIES.
See PUBLIC UTILITIES.

VALUATION.
I. In general, 1, 2.
II. Purpose of valuation, 3, 4.
III. Ascertainment of value or cost, 5–19.
a. In general, 5–13.
b. Earnings as measure, 14, 15.
c. Sale price as measure, 16, 17.
d. Taxation value as measure, 18, 19.

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VALUATION—*continued.*
IV. Nonphysical elements tending to increase value or cost, 20, 21.
a. Overhead expenses, 20.
b. Bond discount, 21.
V. Valuation of particular kinds of tangible property, 22–38.
a. Property not used or useful in public service, 22–27.
b. Land and building, 28.
c. Working capital, 29–37.
d. Property not owned by utility, 38.
VI. Valuation of particular kinds of intangible property, 39–46.
a. Going value, 39–42.
b. Franchises, 43–46.

I. In general.

1. The reproduction cost method of valuation may be adopted in a rate case where no complete or accurate record of either the original cost or actual investment in the property of a public service company exists. Re San Jose Water Co. (Cal.) 706.

2. The fact that a street railroad was constructed by a contractor upon a percentage basis was considered as a reason for the close scrutiny of reported costs in ascertaining the amount of capital to be taken as a basis in computing rates. Re Blue Hill Street R. Co. (Mass.) 370.

II. Purpose of valuation.

3. The New Jersey Commission will not countenance a double standard of valuation, one for the purpose of taxation and the other for the issuance of securities, where, by the state Constitution, property is taxable at its full value, particularly where the utility has appealed from the assessment of its property by the State Board of Assessors, and obtained a reduction in the valuation on its own testimony that the value was less than that fixed by the assessors. Re Raritan River R. Co. (N. J.) 72.

4. The Maine Commission did not make a valuation of warehouse property used in a business as a public utility, in authorizing a sale of property and the issuance of stock in payment therefor, where a large part of the profits from the business sold come from non-utility enterprises in which the purchaser can continue to fix prices. Re Tyler (Me.) 691.

III. Ascertainment of value or cost.

a. In general.

5. The fair present value of a telephone plant was ascertained, for the purpose of fixing rates, by considering the elements of value, tangible and intangible, of the property used in the service, taking into account the fact that the plant was a going concern in successful operation, and including engineering, supervision, and interest during construction, organization, and general expenses, contingent expenses, P.U.R.1915E.

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VALUATION—*continued.*
insurance, general contractor's profit, promotion, and other development expenses, and working capital. Re Southwestern Teleg. & Teleph. Co. (Mo.) 1087.

6. In ascertaining the amount of capital expenditures of a street railway company to be taken for rate-making purposes, comparison was made between the amount of bonds, approved by the Commission for less than the amount petitioned for, plus the capital stock authorized and issued and the permanent investment of the company, as shown by its balance sheet, filed in petitioning for authority to issue the bonds, and the estimated cost of the property made by an agent of the Commission, who made no allowance for overhead charges; and also between an estimate of cost with an allowance for overhead charges, made by an engineer of the Commission at the time of the application for the rate increase and the permanent investments, as shown by the balance sheet at that time, and the prior estimate of cost made when petitioning for the bond issue. Re Blue Hill Street R. Co. (Mass.) 370.

7. In determining the amount of capital to be considered as a basis for computing rates, comparison was made between the book value per mile of track of a street railroad company and other companies operating in the state, with due allowance for widely different conditions affecting construction and equipment. Re Blue Hill Street R. Co. (Mass.) 370.

8. In arriving at the amount of money actually invested in the property of a telephone plant by the stockholders, it is proper to compute dividends that should have been paid, where it appears that no dividends have actually been paid and that the money which would have otherwise been devoted to that purpose has been used for the development and extension of the plant. Re Valparaiso Teleph. Co. (Neb.) 578.

9. In ascertaining the value of a telephone plant, items credited to capital stock and discount on stock and charged to investment, and which later are credited to investment and charged to contracts and licenses, and items representing no actual investment, entered on the books upon the transfer of the company, were rejected. Re Southwestern Teleg. & Teleph. Co. (Mo.) 1087.

10. Indebtedness of a company cannot be included in the value of its property for rate-making purposes where the property covered thereby has already been included in the valuation. Re Hayward Water Co. (Cal.) 834.

11. Improvements in a telephone plant due to a change from grounded to metallic circuit will not be valued for rate-making purposes until they have actually been made. Re Moweaqua Teleph. Co. (Ill.) 857.

12. The value of the property of a public utility for the purpose of determining whether a stock dividend is permissible will not be increased by the New Jersey Commission by an amount assumed to have been expended for legal expenses not otherwise included, where the proof as to such expenditures is not convincing, since the board does not look with favor upon applications for stock dividends, and will not P.U.R.1915E.

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VALUATION—*continued.*
sanction the issuance of stock for such a purpose unless satisfied by positive proof that the value justifying the increase of stock proposed has been added to the property of the utility. Re Raritan River R. Co. (N. J.) 72.

13. In valuing the property of a telephone company for rate-making purposes, the Nebraska Commission adopted the present value of the physical property as found by its engineer, where the property had been acquired by a favorable purchase and there was an absence of records showing the value of the original property. Re Crownover Teleph. Co. (Neb.) 571.

b. Earnings as measure.

14. A Commission, in allowing in a rate case a return of 8 per cent upon a certain valuation, does not really fix a higher valuation because of the fact that the income produced by the 8 per cent return will be capitalized in the public markets at 5 per cent in dealing with securities, where the 5 per cent capitalization is based on an unregulated rate. Passaic v. Public Utility Comrs. (N. J.) 625.

15. Charges made by warehousemen will be given little weight in determining the value of their property and the amount of stock which properly should be issued in payment therefor, since the value of property is used to fix charges rather than charges to fix value. Re Tyler (Me.) 691.

c. Sale price as measure.

16. The purchase price of a telephone property should not be accepted as the sole measure of its value, for rate-making purposes. Re Crownover Teleph. Co. (Neb.) 571.

17. In determining the fair value of the property of a public service corporation for rate-making purposes, the Wisconsin Commission will not claim a lower value on the property than it otherwise would by reason of the fact that the owners paid very little for it. Gates v. Bridgeport Toll Bridge Co. (Wis.) 602.

d. Taxation value as measure.

18. The New Jersey Commission, in arriving at the value of the property of a railroad company for the purpose of determining whether a proposed stock dividend is justified, while not bound by a valuation by an official board for the purpose of taxation, will assume that the true value was that fixed by the tax board where no other valuation has been made either by the company or the Commission. Re Raritan River R. Co. (N. J.) 72.

19. The value of the property of a public utility fixed by a state board for the purpose of taxation, reduced on appeal on the testimony of the utility that the value of the property was less than that fixed by the taxation board, will not be assumed to be incorrect, on the theory that there were hidden values not taken into consideration in the valuation for the purpose of taxation. Re Raritan River R. Co. (N. J.) 72.

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VALUATION—*continued.*

IV. Nonphysical elements tending to increase value or cost.

a. Overhead expenses.

20. In valuing a reconstructed telephone company's property as an operating plant for rate-making purposes, an addition of 15 per cent was made to the capital account to cover overhead expenses during construction. Re Gillespie Home Teleph. Co. (Ill.) 214.

b. Bond discount.

21. The amount of the discount on bonds sold by a public service corporation cannot be considered as part of the capital investment which is to be taken as a basis for fixing rates. Re Blue Hill Street R. Co. (Mass.) 370.

V. Valuation of particular kinds of tangible property.

a. Property not used or useful in public service.

22. Unused service connections of a water company laid in a street before paving at the request of the city should be included in the valuation of the plant for rate-making purposes. Re Hayward Water Co. (Cal.) 834.

23. The value of an abandoned pumping plant used by a water company as a material yard was allowed in the valuation of the property of a company for rate-making purposes, where the company could not supply other storage facilities at less cost. Re Hayward Water Co. (Cal.) 834.

24. The value of an artificial gas plant constructed in accordance with the requirements of an ordinance passed by the board of trustees of a city should, so far as another city being supplied with natural gas is concerned, be amortized over a period of years, rather than maintained to provide for the remote possibility of continued interruption in the natural gas transmission system. Re Southern Counties Gas Co. (Cal.) 197.

25. Only one third of the value of the land of a telephone company and the cost of construction of cement sidewalks thereon should be included in the valuation of the company's property for rate-making purposes, where it appears that the remaining portion was unoccupied, and located so as to be used for other purposes, and is not likely ever to be required for telephone purposes. Re Webster Teleph. Co. (S. D.) 516.

26. Although a return upon the investment in an extension of a street railroad may not be denied on the ground that it was built contrary to the dictates of reasonable prudence and sound business judgment, except in a clear case, no allowance was made for the investment in a branch line which had been discontinued and was of no economic value to the state or the company. Re Blue Hill Street R. Co. (Mass.) 370.

27. Tools used during the construction of a rural telephone plant do not constitute a proper charge in the capital account of the city plant, P.U.R.1915E.

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VALUATION—*continued.*
unless the rural lines pay to the city plant some rental charges for their use. Re Webster Teleph. Co. (S. D.) 516.

b. Land and building.

28. The test for determining the value of the real estate on which the plant is located, in valuation proceedings for rate-making purposes, is what the real estate is worth on the market for any legitimate use to which it might be put in a competitive market with other available sites for that purpose, and not the price that a utility might be willing to pay for a parcel of real estate which it does not own and on which its plant might be located, rather than to remove to another location. Re Peru Heating Co. (Ind.) 502.

c. Working capital.

29. A reasonable amount should be allowed for working capital in the valuation of a utility's property, which should include the material and supplies which experience has shown to be necessary to be kept on hand, and enough cash to pay expenses until the collection of revenues provides a sufficiency. Re Auto Livery Co. (D. C.) 1.

30. The cost price of materials and supplies which an auto-livery and taxicab company had on hand at the date of the valuation was included by the Commission in its allowance of working capital in arriving at the value of the company's property, where there was no suggestion that such amount did not satisfy the requirements of the company at that time. Re Auto Livery Co. (D. C.) 1.

31. One half the sum paid in advance by an auto-livery and taxicab company for insurance was included by the Commission in its allowance of working capital in arriving at the value of the company's property, where it appeared that the company distributed this item by charging an equal portion thereof to expenses monthly. Re Auto Livery Co. (D. C.) 1.

32. One half the sum paid in advance by an auto-livery and taxicab company for licenses was included by the Commission in its allowance of working capital in arriving at the value of the company's property, where it appeared that the company distributed this item by charging an equal portion thereof to expenses monthly. Re Auto Livery Co. (D. C.) 1.

33. A claim of one half of the amount of annual taxes as an allowance for working capital was excluded by the Commission in arriving at the value of an auto-livery and taxicab company's property, on the ground that no capital was necessary for taxes that were not paid in advance, and that they should be accrued from charges to the income account monthly for payment at the end of the fiscal year. Re Auto Livery Co. (D. C.) 1.

34. A taxicab company the present value of whose property was found to be $8,989 was allowed a working capital of $700, consisting of materials and supplies $100, prepaid insurance $75, prepaid licenses $25, and cash $500. Re Barnett Taxicab Co. (D. C.) 6.

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VALUATION—*continued.*

35. One twelfth of the gross annual income of a telephone company was held to be a reasonable allowance for working capital, in valuing its property for rate-making purposes. Re Southwestern Teleg. & Teleph. Co. (Mo.) 1087.

36. Funds necessarily kept out of use for working capital are properly included in the valuation of the property of a water company for rate-making purposes, but where the cash balance of the company was $43.20 on January 1, 1914, $91.90 on January 1, 1915, and $899.25 on June 15, 1915, it was held that the sum of $3,000 was in excess of the average working capital withheld from use by the company. Re Hayward Water Co. (Cal.) 834.

37. The sum of $4,000 as cash in hand to meet the regular expense payments of an auto-livery and taxicab company was held sufficient by the Commission in making an allowance for working capital in arriving at the value of the company's property in view of the experience of similar companies. Re Auto Livery Co. (D. C.) 1.

d. Property not owned by utility.

38. The value of transmitters, receivers and induction coils used by a telephone company were capitalized for the purpose of allowing a return thereon, although they were the property of another company, where a per cent of the gross income was paid to the owner as a license charge. Re Southwestern Teleg. & Teleph. Co. (Mo.) 1087.

VI. Valuation of particular kinds of intangible property.

a. Going value.

39. In the valuation of the property of a waterworks company for rate-making purposes, the property was valued as a going concern, but no separate allowance was made for going value. Re Hayward Water Co. (Cal.) 834.

40. A claim for the allowance as going value of a sum for the value of services rendered by an officer of an auto-livery company, for which no salary was paid, was excluded by the Commission in arriving at the value of the company's property, where it appeared that the company having but a nominal cash capital, the acquisition of its property resulted solely from the services of the officer, and that therefore their value was represented by the value of the property. Re Auto Livery Co. (D. C.) 1.

41. The going value of a gas utility should be allowed in valuing its property for rate-making purposes, to the extent that it represents the fair present value of all the elements of its intangible property, including the right under its franchise to use its property for the purposes of its incorporation and in the public streets where it is locally authorized to go, but excluding the commercial value of the franchise. Public Service Gas Co. v. Public Utility Commission (N. J.) 251.

42. In a proceeding to determine the rates for hot-water heating service rendered by a plant valued at $42,454, an allowance of $7,546 was added for going value and working capital. Re Peru Heating Co. (Ind.) 502.

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VALUATION—*continued.*

b. Franchises.

43. In determining the value of a franchise of a public utility for security issuance purposes an amount was allowed to cover the assumed cost of obtaining it, in the absence of the proofs of the sum actually expended. Re Raritan River R. Co. (N. J.) 72.

44. Franchise value cannot be considered as an asset of a utility for capitalization purposes. Re North Yarmouth Water Co. (Me.) 109.

45. The fact that the charter right of a gas utility to charge reasonable rates sufficient to yield a net profit of 8 per cent on the value of its property is a valuable property right affords no ground for making an allowance for the commercial value of the nonexclusive franchise in ascertaining the value of the utility's property for rate-making purposes. Public Service Gas Co. v. Public Utility Commission (N. J.) 251.

46. In valuing the property of a gas utility for rate-making purposes, no allowance can be made for the commercial value of a nonexclusive franchise, on the theory that the utility has a property right to continue to charge high rates which have accorded a property value to the franchise, as reflected in the market value of its securities, as a result of the failure of the state to enforce its rights to regulate rates, since such failure does not preclude the state from fixing a lower reasonable rate. Public Service Gas Co. v. Public Utility Commission (N. J.) 251.

VALUE OF SERVICE.

As basis of ratemaking, see RATES, 26, 27, 49.

VALUES.

Apportionment of, see APPORTIONMENT, 6, 7.

VEHICLES.

See also AUTOMOBILES.

Nature of right of common carriage on highways by means of, see HIGHWAYS.

Power of legislature to regulate vehicles on highways or to delegate such power of regulation to municipalities, see LEGISLATURE, 1.

Ordinances regulating a particular class of vehicles as discriminatory, see MUNICIPALITIES, 1.

Power of municipality to regulate and license, see MUNICIPALITIES, 3.

VERIFICATION.

Of complaint, see PLEADING, 3.

VOLUNTARY RATES.

Presumption as to reasonableness of rates voluntarily established, see EVIDENCE, 3.

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VOLUNTARY RATES—*continued.*

Consideration of, upon application for increase in rates, see RATES, 10.

Increase of, denied after short time of operation, see RATES, 24.

VOUCHERS.

Duty of public service corporation to issue vouchers for payments, see ACCOUNTING, 2.

WAIVER.

1. A waiver of a valid defense in favor of one of the plaintiffs to the action does not operate as a waiver of such defense in favor of the other parties to the action. Davis v. Watertown Nat. Bank (Tex.) 531.

WAREHOUSES.

Sale of property and franchise used in storage warehouse and general merchandise business authorized, see CONSOLIDATION, MERGER AND SALE, 3.

Security issues to rebuild warehouse destroyed by an earthquake, see SECURITY ISSUES, 12.

Valuation of, see VALUATION, 4, 15.

WASTE.

Of natural gas through distributing system, see NATURAL GAS, 2, 3.

Flat water rates as permitting, see RATES, 46.

Duty to avoid waste of water supply, see SERVICE, 79–81.

WATER.

Right of water company to increase rates to conform to its authorized charges in another city, to secure uniformity in accounting, see ACCOUNTING, 3.

Accounting by water company operating its plant in connection with a machine shop, see ACCOUNTING, 10.

Accounts of municipal water plant to be kept separate, see ACCOUNTING, 11.

Impairment of contract to supply water by order providing for new classes of service, see CONSTITUTIONAL LAW, 7.

Impairment of obligation of contract to supply water at specified rates by order changing rates, see CONSTITUTIONAL LAW, 8.

Delegation of power to Commission to regulate water rates, see CONSTITUTIONAL LAW, 15.

Abandonment of right to regulate water rates by nonsuer, see CONSTITUTIONAL LAW, 16.

Validity and enforceability of franchise provision to place and maintain fire plugs at places designated by municipal authorities, see CONTRACTS, 1.

Amount allowed for depreciation of plant, see DEPRECIATION, 22, 23.

Free service, see DISCRIMINATION, 16, 18.

Conclusiveness on Commission of finding in another case as to depreciated reproduction cost of waterworks property, see EVIDENCE, 2.

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WATER—*continued.*

Security for payment of bills, see PAYMENT, 8–21.

Individual supplying, to a limited number of buildings as public utility, see PUBLIC UTILITIES, 4.

Rates for, see RATES, 41–52.

Amount of return on investment in waterworks property, see RETURN, 38, 39.

Security issues, see SECURITY ISSUES, 1, 18, 23, 24.

Service by company, see SERVICE, 8, 9, 15–17, 19–21, 67–83.

Valuation of property of water company, see VALUATION, 22, 23, 36, 39.

1. The contention by a water company that an order of the corporate authorities that it lay a water pipe on the bed of a river is unreasonable because such pipes would be carried out by the ice, is disproved by the fact that a private water company maintains a line so located. Marlinton v. Marlinton Service Co. (W. Va.) 277.

WATER RIGHTS.

Security issues for payment of undeveloped water power, see SECURITY ISSUES, 17.

WEAR AND TEAR.

As an element of depreciation, see DEPRECIATION, 1.

WEARING VALUE.

To be considered in fixing rate of depreciation, see DEPRECIATION, 7.

WHOLESALE ELECTRIC COMPANY.

Conditions imposed on authorized merger with retail companies, see CONSOLIDATION, MERGER, AND SALE, 1.

WORKING CAPITAL.

Allowance for, in valuation, see VALUATION, 29–37.

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